



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/31622/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court, Birmingham

Determination

On 23 September 2014

Promulgated

On 2 October 2014

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ROBERTSON

Between

**QAISER RASHEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Bhachu, Counsel, instructed by JM Wilson, Solicitors.

For the Respondent: Mr D Mills, Senior Presenting Officer.

DETERMINATION AND REASONS

Immigration History

1. The Appellant is a male citizen of Pakistan, whose date of birth is 18 September 1989. His appeal against the decision of the Respondent, dated 10 July 2013, to refuse his application for leave to remain on the basis of his private and family life was dismissed by First-tier Tribunal Judge Narayan, the reasons for which are contained within his determination dated 18 November 2013.

2. The Appellant came to the UK on 31 January 2011 on a student visa with leave to remain until 27 March 2012. He was granted further leave to remain as a student until 30 June 2013 and made his application for leave to remain on the basis of his private and family life on 4 June 2013. He married Miss Waller (the Sponsor) on 11 March 2013 [89]. Miss Waller has six children; the Appellant is not their biological father but it was claimed before Judge Narayan that the Appellant had a genuine and subsisting relationship with the Sponsor and her children, that he was part of the family unit and interacted with them on a day to day basis.
3. The Judge found that the relationship between the Sponsor and the Appellant was not genuine and subsisting [101]. He dismissed the appeal under the Immigration Rules and found that there was no need to apply Article 8 directly because arguably good grounds for so doing were not established. He relied on **Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 640 (IAC)** and **Nagre [2013] EWHC 720 (Admin)**.
4. In the grounds of application, in essence, it is stated on behalf of the Appellant that the Judge erred in failing to consider the rights of the Appellant's children under Article 8 and effectively deprived them of the right to have their best interests assessed under S 55 of the Borders, Citizenship and Immigration Act 2009. It is submitted that it is a "perversity to rely on **Nagre** and **Gulshan** "good reasons" to avoid a substantive Article 8 analysis" where the evidence of the children and Miss Waller has been accepted.
5. Permission to appeal was granted by Upper Tribunal Judge Goldstein, who stated that "The principal finding of fact made by the judge was that he did not find that there was a genuine and subsisting relationship between the appellant and the sponsor and gave a number of reasons for reaching that view. However, it is arguable that the findings made do not sit well with other findings made in relation to the evidence of the children and no consideration was given to their interests."
6. The Respondent filed a Rule 24 response in which it is submitted that the Judge directed himself appropriately, that he took into account the evidence of the Appellant and her children and that there was "...no error in his handling of this evidence on the basis that he effectively considers that children (sic) and the appellant's partner have been duped (paragraph 105)".

Submissions

7. Miss Bhachu amplified the grounds of application, stating that the salient points were that the children were present to give evidence but were not cross-examined [81], their evidence was accepted in relation to their interactions with the Appellant [81], that they did not see their fathers [27], they had a good relationship with the Appellant [37], the Appellant had been living within the family unit since 25 March 2013 [90] and therefore would have been living with the children. She submitted that at paragraph [99] the Judge made inconsistent findings because he accepted

the evidence of Miss Waller and the children and found that they viewed the relationship as genuine but decided at [105] that the relationship was not genuine.

8. She further submitted that the Judge then failed to consider the best interests of the children under s 55, which had to be considered regardless of whether an Article 8 assessment was conducted, and that **ZH (Tanzania) [2011] UKSC 4** and **Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 197 (IAC)** applied. She also submitted that s 117(b)(6) of the Immigration Act 2014, which came into force on 28 July 2014, required the best interests of the children to be taken into account in an assessment of proportionality under Article 8 ECHR.
9. Mr Mills submitted that the presenting officer at the first-tier Tribunal hearing did not cross-examine the children, there was no dispute as to their evidence, but a failure to cross-examine could not be taken as an acceptance that what was said in their evidence was true. He pointed out that the presenting officer had submitted that there were two views that could be taken of the evidence; that is, either the Appellant and the Sponsor are friends who are trying to help each other out or that the Sponsor is genuine and the Appellant is not [50]. The Judge took the view that the Appellant was not genuine and was duping the Sponsor. As the relationship with the Sponsor is not genuine, the relationship with the Sponsor's children is not genuine either; there was no basis for drawing a distinction between the relationship between the Appellant and the Sponsor and the Appellant and the Sponsor's children. If the Judge had considered the best interests of the children expressly, what was to be said but that it was not in their best interests? That is the finding the Judge made.
10. Mr Mills also submitted that the Judge considered Article 8 at [97] - [104]; the Appellant could not meet the Rules and compelling/exceptional circumstances must be established to consider the application outside the rules. The Judge had in mind the children of the Appellant and did not accept that those amounted to compelling circumstances. He submitted that even if the Judge had expressly stated that he had considered the best interests of the children, it would not have made a material difference to the outcome.
11. In relation to paragraph 117(b)(6) of the 2014 Act, Mr Mills submitted that this came into force on 28 July 2014 but the decision was dated February 2013 and the provisions of that Act did not apply unless I found that there was a material error of law, in which case they would be relevant to any future decision.
12. In reply, Miss Bhachu submitted that the Respondent's position is based on speculation; the Judge did not state that the relationship between the Appellant and the Sponsor's children was not genuine. Referring to the evidence before the Judge, Miss Bhachu submitted that the Judge in fact found the opposite, that is, that there was a bond between the Sponsor's children and the Appellant, and if an error of law were found, this would materially affect the s 55 assessment.

Decision and reasons

13. Much of the basis of the Judge's decision hangs on his primary findings as to the nature of the relationship between the Appellant and the Sponsor and the credibility of the Appellant. There was no dispute before me as to the finding made by the Judge regarding the relationship between the Appellant and the Sponsor; no submissions were made in relation to this in either the grounds of application or in the submissions before me. For the avoidance of doubt, the Judge's finding that their relationship was not genuine was based on his findings at [85] - [90]. These findings were reasonably open to him on the evidence before him. The Judge, throughout his determination, made strong adverse credibility findings against the Appellant. He found that the Appellant was "prepared to give evidence which he thinks will assist him regardless of whether it be true or not" [87] and "To give evidence which he thinks will assist him claim (sic) to stay in the United Kingdom regardless of whether it be true or not" [88]. In this context, the Judge found that the Sponsor considered the relationship to be genuine but the Appellant was not genuine. See also [95 and 99]. In the context of the findings on credibility, it can be seen that there were specific issues in relation to which the evidence of the Sponsor was also not accepted by the Judge [89].
14. The Judge was well aware of the evidence of the Sponsor and her children as to the Appellant's interactions with the children. This evidence was accepted by the Judge. Miss Bhachu submitted that the Judge should have put more weight on this evidence. However, the matter of weight is for the Judge. At no point does the Judge find that the relationship between the Appellant and the Sponsor's children is genuine or that there was a bond between the Sponsor's children and the Appellant, despite his having accepted the evidence of the Sponsor and her children as to their interactions with the Appellant [81] and it would be difficult to see how he could find that the Appellant's relationship with the children was genuine and subsisting in view of his findings on the credibility of the Appellant. The fact that the children provided witness statements regarding their relationship with the Appellant, which was indicative of how they viewed their relationship with him, did not mean that the Appellant was with the family and interacted with the children for any reason other than to further his application for leave to remain in the context of the Judge's findings on credibility.
15. As to the need to consider the best interests of the children under s 55 as a standalone issue, the failure by the Judge to expressly refer to s 55 is not an error of law (**AJ (India) v SSHD [2011] EWCA Civ 1191**). The thoughts and wishes of the children were expressed in their statements, as were details of their interactions with him. The Judge accepted their evidence; he had regard to it. The weight he placed on their evidence, in the context of the credibility findings, was a matter for him. He found that the nature of their relationship with the Appellant was insufficient to engage Article 8, bearing in mind that they had lived for many years without the Appellant, as a family unit with their mother and there was no evidence before the Judge that their physical and moral integrity would be compromised if the Appellant were required to leave the UK. Whilst the

Judge could have structured his determination better, from the findings made by him it can be inferred that it is not in the best interests of children for someone to enter into a relationship with them simply to further an application for leave to remain. I find that that no material error of law is disclosed.

16. Finally, as to the submission that the Judge could not use **Gulshan** to avoid the need to carry out an Article 8 assessment, whilst there are structural difficulties with the determination, these do not impact on the outcome of the case. The need to consider family relationships not sufficiently recognised under the Immigration Rules would only arise if the relationships were genuine on the part of all parties. The Appellant's lack of credibility precluded the need to consider Article 8 on the basis of family life because it was not engaged on the basis of family life with the Sponsor and her children. As to private life, the Appellant was in the UK as a student and was at all times in the UK on a temporary basis. A private life built in these circumstances cannot result in a successful Article 8 claim (**Patel [2013] UKSC 72** and **Nasim and others (Article 8) [2014] UKUT 25 (IAC)**). His bid to stay in the UK by entering into a relationship to secure this aim could not strengthen an Article 8 claim. He no longer had leave to remain under the Immigration Rules and there was nothing to prevent him from resuming his private life in Pakistan. Article 8 was simply not engaged.

Decision

17. The decision of Judge Narayan discloses no material errors of law and his decision must therefore stand.

Anonymity

18. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No request has been made for an anonymity order and pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I find no reason to make an order.

Signed

Date

M Robertson
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

In light of my decision, I have considered whether to make a fee award (Rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4) (a) of the Tribunals Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the appeal has been dismissed, Judge Narayan's fee award is confirmed.

Signed

Dated

M Robertson
Sitting as Deputy Judge of the Upper Tribunal