



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

Appeal Number: IA/12806/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 30 March 2015**

**Decision and Reasons Promulgated
On 14 April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

SIHAM EL KORICHI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Khan from Whitestone Solicitors

For the Respondent: Mr Mc Vitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Ransley promulgated on 4 July 2014 which dismissed the appeal under the Immigration Rules but allowed the Appellant's appeal under Article 8 finding that it was disproportionate to remove her to Morocco.

Background

3. The Appellant was born on 5 September 1990 and is a national of Morocco.
4. On 12 December 2011 the Appellant submitted further representations in support of her application for leave to remain on the basis of her family and private life with her mother and brother under Article 8 ECHR.
5. On 26 February 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons:
 - (a) The Appellant did not meet the requirements of Appendix FM and paragraph 276ADE.
 - (b) The Respondent took into account the best interests younger brother but did not have an impact assessment from Manchester Social Services as such an assessment would only be made when the Appellant was removed.
 - (c) Many young people are the carers for their parents and therefore there is nothing unusual or exceptional about the circumstances of this case warranting a grant of leave outside the Rules.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Ransley ("the Judge") allowed the appeal under Article 8.
7. The Judge found :
 - (a) The Appellant has established a private life with her mother and brother since her entry into the UK in 2005.
 - (b) The Appellant has taken parental responsibility for her younger brother because of her mother's disability.

- (c) The Judge carried out an assessment by reference to the questions posed in Razgar [2004] UKHL 27 with the best interests of the Appellant's 12 year old Adam as a primary consideration.
 - (d) At paragraphs 27-40 the Judge considered all of the evidence which included that of an independent social worker and concluded that the decision to remove was disproportionate.
8. Grounds of appeal were lodged on the basis that the Judge had erred in failing to have sufficient regard to the Respondent's position and the public interest. Permission was initially refused by First –tier Tribunal Judge Osbourne on 5 September 2014. The application was renewed and Upper Tribunal Judge Kekic gave permission to appeal stating that both sets of grounds relied on showed arguable errors of law.
9. At the hearing I heard submissions from Mr Mc Vitie on behalf of the Respondent that :
- (a) He relied on the grounds of appeal.
 - (b) In essence two issues were raised.
 - (c) The first was that the Judge had failed to give sufficient weight to the previous adverse immigration history of the Appellant and the cost to the public purse of her being educated in the UK in assessing proportionality.
 - (d) The previous unappealed decision of 2007 suggested that the Appellant's relationship was not as close with her mother as was now claimed; there was no mention in the 2007 determination of the Appellant's mother's health problems.
 - (e) This was not a challenge to the weight the Judge afforded to certain considerations but that it was not considered at all.
 - (f) The Judge should have taken into account that the Appellant did not meet the requirements of the Rules in Appendix FM and paragraph 276ADE.

10. On behalf of the Appellant Mr Khan submitted that :

(a) This was a clear and detailed decision.

(b) The judge properly determined that given the application was prior to the introduction of the new Rules in July 2012 in accordance with Edgehill the application was assessed by reference to Article 8 outside the Rules. Even had the Judge expressly acknowledged that the Appellant did not meet the requirements of the Rules it would have made no material outcome to the decision.

(c) The decision recognised that the factual situation in 2007 was very different from that today: the Appellant's mother's condition worsened after 2009 and it was her deterioration that led to their relationship becoming closer. The Judge heard oral evidence and medical evidence to this effect.

(d) All of the relevant factors were taken into account

11. In reply Mr Mc Vitie on behalf of the Appellant submitted that;

(a) There was no reference in the decision to those factors which mitigated against the Sponsor's entitlement to care from the State. The Appellant would be unable to work and would be reliant on public funds

Finding on Material Error

12. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.

13. The Appellant in this case came to the United Kingdom in 2005 as a visitor to see her mother who was a United Kingdom citizen. In September 2005 she made an application for leave to remain as the child of a settled parent which was refused and another application was made in October 2005 and refused in June 2006. An appeal against that decision was heard and dismissed on 16 March 2007 and the Appellant was appeal rights exhausted on 13 August 2007 and was served with a notice of liability for removal as an overstayer. Fresh representations were made on 12 December 2011 and 22 January 2014 on the basis that removal would engage Article 8 given the Appellant's relationship with her mother and brother

arising out of her mother's ill health. This was the background set out detail at paragraphs 10-13 of the Judge's findings and therefore I am satisfied that it cannot be argued that she failed to take that negative history into account when she specifically acknowledges in this chronology that the Appellant had no right to be in the UK and was an overstayer. The weight she accorded the background to the case is a matter for her and no error of law is revealed in relation this challenge.

14. The grounds challenge the Judge's assessment of the decision in Edgehill v Secretary of State for the Home Department [2014] CIV 402 and suggest that the Judge therefore failed to acknowledge that the Appellant did not meet the requirements of Appendix FM and paragraph 276ADE. The Judge set out at set out at paragraph 14-17 why she preferred the guidance in Edgehill and I am satisfied that she gave adequate reasons for concluding that the Appellant's application was made prior to 9 July 2012 and was outstanding and therefore the transitional provisions applied.

15. Even if she were wrong in that I accept that if an applicant does not meet the criteria set out in the Rules then guidance issued by the Secretary of State in the form of instructions provides in effect, that leave to remain outside the rules could be granted in the exercise of residual discretion in 'exceptional circumstances' which are defined in the guidance and must be exercised on the basis of Article 8 considerations, in particular assessing all relevant factors in determining whether a decision is proportionate under Article 8.2. Although case law continues to develop in relation to Article 8 and the Rules the current position is set out in R(MM (Lebanon)) v SSHD [2014] EWCA Civ 985 where the Court of Appeal rejected the analysis of Sales J in R (Nagre) v SSHD [2013] EWHC 720 (Admin) that it was only necessary to undertake a consideration of a claim outside the Rules if there was an "arguable" case of good grounds for granting leave outside the Rules.

16. The Judge was therefore entitled to assess the case by reference to Article 8 outside the Rules guided by Razgar principles. The Appellant always accepted that she did not meet any of the requirements of the Rules pre July 2012 and this was specifically acknowledged by the Judge in paragraph 24 of the decision. It

could never have been argued that she met any of the provisions of the Rules post 9 July 2012 but I am satisfied that in the light of her overall assessment of the facts of this case specifically acknowledging this would have had no material outcome given the nature of the case.

17. The Judge at paragraphs 25- 41 carried out a meticulous and detailed analysis of the Appellant's relationship with her mother and brother and the facts that she found established that the factual matrix underpinning the claim were significantly different to those which prevailed in 2007 as her mother's health had declined since 2009. The conclusion she reached, that in the circumstances of this case taking into account as a primary consideration the best interests of the child involved, removal was disproportionate was a conclusion that was open to her on the evidence before her.
18. The grounds also challenge the Judge's approach to the involvement of social services although it is not entirely clear what error is being alleged. Throughout the decision the Judge acknowledges the involvement of social services in the life of the mother and brother of the Appellant and the fact that Manchester social services had, in effect, refused to assist by providing an impact assessment regarding the need for care. The Judge was therefore obliged to proceed on the basis of the evidence before her and it was open to her to conclude that given that social services had visited the family in 2012 and 2013 to assess the family circumstances they had no concerns about the Appellant's role as carer.
19. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : *"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*
20. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

21. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

22. The appeal is dismissed.

Signed

Date 8.4.2015

Deputy Upper Tribunal Judge Birrell