



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

Appeal Number: IA/23552/2014

THE IMMIGRATION ACTS

**Heard At Field House
On 10th June 2015**

**Decision and Reasons
Promulgated
On 21st July 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

MR JORGE LABBE HERRERA
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Himself.

For the Respondent: Mr. S. Walker, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. In these proceedings it is the Secretary of State who is appealing. For convenience I will continue to refer to the parties as they were in the First-tier Tribunal.
2. The appellant is a national of Argentina, born on 29 June 1952. He came to the United Kingdom on 20 November 1999 on a six-month visit Visa.

He then obtained leave to remain as a student which was extended until 30 September 2002. Thereafter he overstayed.

3. On 4 April 2013 he applied for leave to remain on human rights grounds, namely, private life. His application was refused on 6 June 2013, with no right of appeal. In light of a possible judicial review the respondent reconsidered the decision. A new decision was made on 12 May 2014 which maintained the refusal and gave a right of appeal which he exercised.
4. His appeal was heard on 2 February 2015 by First-tier Judge Hembrough. In a decision promulgated on 3 March 2015 the appeal was allowed under the immigration rules on the basis that he satisfied ruled 276 ADE (vi), namely, whilst he had lived less than 20 years in the United Kingdom there would be very significant obstacles to his reintegration in Argentina. In the alternative, the judge concluded it was appropriate to allow the appeal on the basis of his freestanding article 8 rights and his private life. The decision indicates the judge appreciated that the new paragraph 117 had to be taken into account.
5. The appellant was not represented and the judge agreed to allow his friend, Ms Reid, to assist him. She also gave evidence. The judge was provided with a short bundle from the appellant containing witness statements together with a supplementary bundle of 354 pages.
6. The claim is summarised at paragraph 15 onwards of the decision:
 - “15. The synthesis of his evidence was that before he left Argentina in 1999 he ran a stationary shop. He never married. He left Argentina because of the deteriorating economic situation. He owns no property there. He explained that his business had failed and he had sold everything before leaving. He came to the UK to study English with a view to moving to the USA where he hoped to start a new business but his plans had not come to fruition for a variety of reasons which were not explained. He said that before coming here had obtained a visa to enter the USA which has now expired.
 16. Since he left Argentina both his parents have died. He has 2 married sisters living there. His brother has lived in Brazil for about 15 years. He has infrequent contact with his sisters via Facebook. They speak via telephone on special occasions such as Christmas and New Year.
 17. Having been out of Argentina for so long he feels that he no longer has any cultural connection to that country and would have difficulty in reintegrating into life there, although he accepted that he is still fluent in Spanish.
 18. He is now 62 years old and has suffered from mental health problems, including depression and obsessive-compulsive disorder (OCD). He was detained under the Mental Health Acts in the UK in 2010 for a period of about three months. In that regard reference was made to medical records appearing in his bundle. He now takes antidepressant medication to manage his condition.

19. If returned to Argentina he would be unlikely to be able to obtain employment there given his age and circumstances. Not having paid the necessary financial contributions he would not be eligible for a pension. He would not be able to turn to his sisters for support as they already live in straitened circumstances and have families of their own to support. He also gave as well the reason for not wanting to return to Argentina that there were not so many opportunities to engage in voluntary work to help others.”

7. Evidence was given by Ms Reid about his good character and charitable works. She said that when he was permitted to work from 2004 to 2011 he paid tax and national insurance contributions from his work as a self-employed sound engineer and from cleaning and painting and decorating. She said that she believed if allowed to work he would be able to support himself without recourse to public funds.

8. The judge found the appellant and Ms Reid to be credible. The judge made the following findings:

“35. I am satisfied that since he last entered the UK in 1989 the Appellant has achieved a very high level of integration into life here and the letters from the voluntary organisations with whom he has interacted all attest to his personal qualities, describing him as a much respected and admired member of his local community.

36. He has been out of Argentina for about 16 years. He never married and his parents are deceased. He owns no property there and the reality I find is that he no longer has any significant connection to that country. Whilst he has 2 sisters there, he has not seen them since he left Argentina. I accept his evidence of infrequent contact and that he would not be able to turn to his sisters for support if returned.

37. I find that he no longer has any meaningful ties whether social, cultural or familial to his country of origin.

38. Given the length of time he has been out of Argentina, his age and his mental health problems I also find that there would be very significant obstacles to his integration into life there. Specifically, I find that he would have very significant difficulty in accessing the medical and other support services he needs to manage his condition without third-party support and that he would also be significantly disadvantaged in the workplace. I consider that his removal is likely to be detrimental to his mental health and that there is a real risk that he will end up isolated and homeless.”

9. In seeking leave the respondent submitted that the immigration judge had not provided adequate reasons why the appellant would face very significant obstacles to integration into Argentina which would lead to an unjustifiably hard outcome. He had spent the first 47 years of his life in Argentina and he has siblings there with whom he could resume more regular contact. There was no evidence that his sisters were unwilling or unable to assist him.

10. It was submitted the judge failed to undertake a proper analysis of the appellant's mental health. No findings were made in relation to health or what treatment was available in Argentina. There was no evidence to

support the tribunal's conclusion that it would be very difficult for him accessing medical treatment in Argentina.

11. It was also submitted there was no evidence that he would be unable to obtain employment in Argentina. He could maintain contact with his friends here through modern means.
12. With regard to a freestanding consideration of article 8 and private life the judge stated :

“43. The appellant has been here over 16 years, during which he has developed an extensive private life. I have found that he has achieved a very high level of integration into life in the UK where, with the support of those around him, who clearly care for him and hold him in high regard, he would be able to support himself without recourse to public funds and continue to make a positive contribution to the lives of others.

44. He speaks English to a high standard. I accept his evidence that he was not able to produce the requisite documentary evidence because as matters stand he cannot afford to take the test.

45. Whilst I have had regard to the public interest considerations set out in paragraphs 117A-D of the 2002 Act, which provide inter-alia that the maintenance of effective immigration control is in the public interest and that I should give little weight (but not no weight) to any private life established by the appellant in the UK when his immigration status was precarious. I find that this is one of those rare cases where even the limited weight to be given to his private life, which I find largely consists of helping other vulnerable members of society in the UK, significantly outweighs the public interest in [h]is removal.”

13. In the leave application it stated that when he came in November 1999 it was only with leave on a temporary basis and since September 2000 he has overstayed. There was no evidence that he was financially independent and costs had been incurred when he received medical treatment. Reference was made to a lack of evidence that the appellant spoke English and the fact he was unable to pay to take the test indicated he was likely to be a burden on taxpayers if he remained.

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14. The appellant attended with his friend Ms Reid. The presenting officer relied upon the grounds on which leave had been granted. Ms Reid said that Judge Hembrough had the benefit of all the documents in the bundle. She repeated that when the appellant was employed he paid taxes. He also was engaged in charitable works, including at a centre where she works. She also mentioned him working in a nursing home. She said that his relationship with his sisters was not good when he left and that their own circumstances were dire. She said that he would have no money to re-establish himself in Argentina.

15. I indicated at the end of the hearing I was reserving my decision. If I did find a material error of law there was sufficient evidence to remake the decision without the need for further evidence or argument.

Consideration.

Under 276 ADE

16. I begin my consideration by turning to the immigration rules dealing with private life, paragraph 276 ADE. He has not been here 20 years. He has been here since 20 November 1999 on visas which were of a temporary nature until 30 September 2002 from when he overstayed. The crucial issue is whether, having lived this lesser period he can demonstrate he has no ties, including social, cultural or family with Argentina which would mean he could not return.
17. There are decisions of the Upper Tribunal where the question of ties with the United Kingdom has been considered. The factual background to the cases is different as they are concerned with deportation proceedings, typically involving young people who have lived in the United Kingdom from an early age. Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 00060 (IAC) concerned a young man being deported for criminal activity. He had arrived in the United Kingdom when he was six years old, had been granted indefinite leave to remain and had been here 21 years. He also had a child. The Upper Tribunal at paragraph 124 stated the natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not limited to social, cultural and family circumstances.
18. At paragraph 36 of the decision Judge Hembrough refers to the length of time the appellant has been out of Argentina; that he owns no property there; that his parents are deceased and he has infrequent contact with his sisters. Reference is also made to his age and his mental health problems. Significant weight is attached to the latter and the judge concludes he would have very significant difficulty accessing medical and support services. The judge also refers to the high level of integration found into life in the United Kingdom and the voluntary work he has done.
19. Clearly the judge was sympathetic towards the appellant, stating at paragraph 44 that he could make a positive contribution to the lives of others. I find the judge's sympathy understandable given the evidence presented of his integration and charitable works. However, the judge has not adequately considered the high threshold imposed by 276 ADE (vi).

20. As the respondent points out, he spent the first 47 years of his life in Argentina. Spanish is his first language. This is not the situation of someone who left Argentina as a child who would be returning to something totally unfamiliar. There may have been some changes to his home country since he left but he would not be returning to an alien environment. He still has family ties, having two sisters there. He has not seen them in a long time but the papers indicate he does maintain a reasonable level of contact with them. The papers also would indicate he still maintains contact, albeit infrequently, with a small group of friends in Argentina.
21. I appreciate at the appellant's age he will face difficulties in obtaining employment. I seek not to underestimate these difficulties. There is nothing to suggest he has any physical incapacity. He has been able to function independently. He is educated to degree level in Argentina and has a specialised interest in sound engineering. In the United Kingdom he has managed, when permitted, to work. This has included working as a cleaner and a painter and decorator. I do not find the possibility of his obtaining some employment in his home country can be ruled out.
22. He has also been engaged in charitable activities. No explanation has been given as to why this could not continue in his home country. It was said on his behalf that he would not be eligible for a full pension on retirement age because he has not contributed into the fund. He would still be entitled to a modest pension.
23. The judge did not make specific findings on his mental health or what would be available in Argentina. On 22 April 2010 he was admitted to a hospital further to section 2 of the Mental Health Act. He was acutely unwell and presenting as being isolated; having impaired concentration and expressing feelings of hopelessness. He was orientated in time, place and person. There were signs of poor diet and it was felt there was a high risk of neglect. On 25 May 2010 he was considered to be much better. I cannot see the date of discharge but it would appear to be approximately 6 weeks later. He was then seen by the community mental health team and attended a psychologist about his obsessive-compulsive disorder. This continued until towards the end of the year.
24. The papers indicate that there are mental health services available in Argentina. One article indicates there are psychiatric facilities in Argentina and that mental health reform is directed towards improving community care. The reasons for refusal letter refer to objective evidence that Argentina has the highest number per capita rate of practising psychologists in the world. The evidence would indicate there would be services available for the appellant should his mental health deteriorate to the stage where he could not self-care. The appellant does have mental health problems. Undoubtedly these and his associated obsessive-compulsive disorders have presented real difficulties for him. Nevertheless, he has largely been able to live independently.

25. My conclusion is that the judge has not adequately explained how the appellant has demonstrated very significant obstacles to his reintegration in Argentina. It would appear the judge was unduly swayed by sympathy for the appellant's plight, his integration into the United Kingdom and his charitable work rather than focusing upon the high threshold established in the legislation.

Article 8

26. The judge refers to section 117 of the 2002 Act and that effective immigration control is in the public interest and little weight should be given to any private life established when a person's immigration status was precarious. The judge goes on to state that this was one of those rare cases where even the limited weight to be given to his private life, which largely consists of helping others, significantly outweighs the public interest in removal. Again, it is difficult to see how, if proper regard is had to the section, it could be said his charitable work significantly outweighed the public interest. The key phrase in the legislation is that *little weight* (my emphasis) should be given to the private life established in the circumstance. The bulk of the time the appellant has spent here has been as an over stayer and before that, his immigration status had been of a temporary nature.

27. I accept the judge was in a position to form a view about the appellant's command of English, albeit his literacy was not confirmed by formal testing. The judge did accept he had integrated into British society which is one of the aims behind section 117.

28. He has worked when permitted to do so and paid taxes and so forth. However, he has claim benefit albeit he did not appreciate that as a person from abroad he did not have entitlement. He also has had a period of hospitalisation and after-care which has been a cost on public funds. He now approaches retiring age. It seems likely in the future he would be a drain on the public purse.

29. The decision of Dube (s117A-D) [2015] UKUT90 (IAC) held that judges are duty-bound to 'have regard' to the specified considerations in section 117. It is not an a la carte menu of considerations that it is at the discretion of the judge to apply or not apply. Whilst expressed in mandatory terms, the considerations specified are not expressed as being exhaustive. Here, the judge placed too much emphasis upon the appellant's integration into society rather than the little weight that should have been given to the private life established in the circumstance. Insufficient weight was placed upon the statutory reference that little weight should be placed upon private life established when the person was in a precarious immigration situation, as here.

Conclusions

30. I find First-tier Judge Hembrough materially erred in law in how regulation 276ADE(vi) was dealt with. There was also a material error in law in allowing the appeal on the basis of a freestanding article 8 private life, bearing in mind the considerations listed in section 117. There is no need for further evidence as the facts are already set out. I would remake the decision dismissing the appeal of Mr Herrera.

Decision.

31. The decision of the First-tier Tribunal is set aside. I remake the decision dismissing the appeal of Mr Herrera under the immigration rules and under article 8.

Deputy Upper Tribunal Judge Farrelly Date