



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

Appeal Number: IA/25035/2014

THE IMMIGRATION ACTS

Heard at Field House

On April 24, 2015

Determination

Promulgated

On May 19, 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR LOVEPREET SINGH GILL
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Parkinson (Home Office Presenting Officer)

For the Respondent: No attendance

DETERMINATION AND REASONS

1. Whereas the original respondent is the appealing party, I shall, in the interests of convenience and consistency, replicate the nomenclature of the decision at first instance.
2. The Appellant is a citizen of India. The appellant last entered the United Kingdom as a visitor on September 17, 2013 with leave to enter until March 4, 2014. On March 1, 2014 he applied for leave to

remain on the basis of his private life but this application was refused by the respondent on May 27, 2014.

3. The appellant appealed this decision on June 12, 2014 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appeal came before Judge of the First-tier Tribunal Clapham SSC (hereinafter referred to as the "FtTJ") on November 18, 2014, and in a decision promulgated on December 11, 2014 he allowed the appeal on human rights grounds.
5. The respondent lodged grounds of appeal on December 18, 2014 submitting the FtTJ had erred by materially in law by materially misdirecting himself in law, making a wholly irrational decision and by giving weight to immaterial matters.
6. On February 4, 2015 Judge of the First-tier Tribunal Davies gave permission to appeal finding the FtTJ may have erred by allowing the appeal because he appeared to accept the appeal could not succeed.
7. The matter came before me on the above date and the Secretary of State for the Home Department was represented as set out above. There was no attendance by the appellant although I was satisfied he had been properly served with notice of the hearing because I was passed a letter dated April 24, 2015 in which the appellant acknowledged the hearing date. His former solicitors had previously notified the Tribunal that they had ceased to act for the appellant.

PRELIMINARY ISSUE

8. I raised with Mr Parkinson his grounds of appeal and in particular the fact the FtTJ had concluded at paragraph [29] of his decision that the appeal could not succeed at the date of hearing. This was an in-country appeal and the relevant date, as determined by Section 85(4) of the 2002 Act, is the date of decision. The FtTJ had also found that there was no evidence to support his claim that removal would infringe his aunt's article 8 rights.
9. I indicated to Mr Parkinson that I was satisfied the FtTJ had erred in paragraph [30] of his determination when he allowed the appeal because all of his previous findings pursuant to the events as at the date of hearing were contrary to that decision.
10. Mr Parkinson agreed with this approach and further submitted that the decision should be remade and the appeal dismissed.

FINDINGS

11. The appellant came as a visitor and shortly before his leave expired he applied to remain on the grounds removal would breach his article 8 right to private life. At the time he submitted his application his

uncle was terminally ill and he was providing care for him. The FtTJ had found that if the appeal was being considered at that stage then this background could amount to a compelling and compassionate circumstance.

12. There was no evidence the appellant could satisfy paragraph 276ADE HC 395 because he had only been in the United Kingdom for a short period of time and there were no significant obstacles preventing his return.
13. As to whether there are any circumstances that require me to consider the matter outside of the Rules I have had regard to the application and the documents submitted. This application was based on the fact his uncle needed caring for but at the date of hearing that situation no longer existed due to his uncle's unfortunate death.
14. The FtTJ found there was no medical evidence to support any other medical issues relating to the appellant's aunt and accordingly there was no basis to find there was any private life at all. The fact they are related does not amount to private life and following the recent decision of The Secretary of State for the Home Department v SS (Congo) & ors [2015] EWCA 387 I have concluded there is no reasonably arguable case under article 8 that is not sufficiently dealt with by reference to paragraph 276ADE HC 395.
15. This is a case where the appellant has been here for a short period of time (17 months) and only sought to stay to care for his terminally ill uncle. That application was refused and at the date of hearing there is nothing else that I am invited to consider especially in light of the previous finding of the FtTJ in relation to the appellant's aunt- a finding I endorse.
16. I therefore confirm the appellant does not meet the Immigration Rules and I find no reason to consider this appeal outside of the Rules for the reasons hereinbefore recited.

DECISION

17. There was a material error. I have set aside the decision and I dismiss the appellant's appeal.
18. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

As the decision was not in accordance with the law we uphold the fee decision made by the First-tier Tribunal.

Signed:

Dated:

Deputy Upper Tribunal Judge Alis