



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

Appeal Number: IA/28908/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 August 2015**

**Decision & Reasons Promulgated
On 7 September 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

AFFAN AHMED KHAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Balroop (Counsel)

For the Respondent: Mr Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Pakistan, aged 25. He appeals with permission against a decision of the First-tier Tribunal to dismiss his appeal against a decision dated 15 July 2014 to refuse to vary his leave to remain so as to extend his leave as a Tier 1 dependent over 18.

Background

2. The appellant entered the UK as the child of a Tier 1 (General) Migrant on 16 June 2009. He was then granted leave to remain as Tier 1 dependent over 18 until 26 June 2014. An application was

made to extend this leave but as noted in the SSHD's decision, no evidence to show dependency and that the appellant was not living an independent life was provided.

3. With the assistance of solicitors the appellant appealed to the First-tier Tribunal with submissions attached to a covering letter dated 23 August 2014. These submissions assert that the appellant is living with his father. Reference is made to a bank statement and NHS letter to show his address. It is then asserted that *"these all facts clearly establish that the appellant is dependent on his father and is not living an independent life"*.
4. The appellant opted for his hearing to be considered on the papers without an oral hearing. Judge Pacey had very little evidence from the appellant and concluded that the appellant provided no evidence to establish key requirements of paragraph 319 of the Immigration Rules and there was insufficient evidence to support a claim to family life.
5. The appellant appealed against this decision. Permission was refused by the First-tier but granted by the Upper Tribunal on 1 June 2015.
6. The matter now comes before me to determine whether or not the decision of the First-tier Tribunal contains a material error of law.

Hearing

7. Mr Balroop asked me to note that the appellant believed that he had submitted the relevant evidence to the SSHD and does not understand why it was not available to the SSHD or the First-tier Tribunal. I asked Mr Balroop to outline with greater precision the alleged error of law committed on the part of the Judge when deciding the appeal on the information available. Mr Balroop acknowledged that the only material error is the Judge's failure to acknowledge that family life could exist between an adult child and his father absent 'extra' ties.
8. Mr Tarlow invited me to uphold the decision. I reserved my decision at the end of submissions, which I now provide with reasons.

Error of law discussion

9. There are numerous grounds of appeal set out in the documents prepared by the appellant's representatives. I do not accept that any identify a material error of law. I address each ground in turn for completeness, although as identified above, Mr Balroop quite properly focussed on one ground of appeal.
10. The submission that the appellant was not provided with a bundle from the SSHD is difficult to follow. As observed by the First-tier

Tribunal Judge who refused permission, this bundle contains documents the appellant already had. The second ground of appeal criticises the Judge for finding that there was no evidence available as to where the appellant's father resides. The Judge could only decide the appeal on the information provided. That information did not contain any cogent evidence regarding the father's address. The Judge was fully entitled to observe that there was simply no evidence available as to where the father resided.

11. The grounds of appeal attach fresh evidence not available to the Judge. There is no good reason for admitting this evidence so late in the proceedings. It was clearly available at the date of hearing. In any event this evidence does not go anywhere near to establishing that the appellant is not living an independent life.
12. The grounds of appeal renewed to the Upper Tribunal point out a 'typo' in the Judge's decision. The Judge has referred to the SSHD's letter stating that the appellant had provided no evidence that "*he was...still living an independent life*". The letter actually states that the "*SSHD is not satisfied that you are living a dependent life*". It is clear from reading the decision as a whole that this is a typographical error and does not indicate a misreading of the letter. The issues before the Judge were very straightforward - there was insufficient evidence to support the appellant's assertion that (1) he was dependent on his father (2) he was not living an independent life (3) his relationship with his family constituted family life for the purposes of Art 8(1).
13. Upper Tribunal Judge Saini identified two arguable errors of law not identified by the representatives to which I now turn. First, the fact that the appellant had been successful in a previous application and the SSHD accepted that he met the requirements of the Rules is clearly apparent from the decision letter. Whatever the status quo in the past the onus was still on the appellant to establish that he continued to meet the rules and he could only do so by providing updated evidence, which he failed to do.
14. I now turn finally to the ground of appeal that was the focus of Mr Balroop's submissions. I accept that it is not necessary for there to be ties "*beyond the normal ties of affection between family members*" or "*extra ties*" in order for there to be family life between an adult child and his parent. The relevant framework is comprehensively set out in **Ghising (family life - adults - Gurkha policy)** [2012] UKUT 00160 (IAC) at [51] to [62]. I accept that the Judge has erred in law in requiring extra ties to be present.
15. I do not consider this to be a material error of law. As **Ghising** states, Art 8(1) is highly fact-sensitive and each case needs to be analysed on its own facts to decide whether or not family life exists [62]. Sir Stanley Burnton stated in **Singh v SSHD** [2015] EWCA Civ

630 at [24] that *“it all depends on the facts”*. Even if the evidence before the Judge is taken at its highest, it was woefully inadequate to enable the Judge to conduct a fact-sensitive analysis to support a conclusion that the appellant continued to enjoy family life with his parents. The submission that such evidence could have been available does not assist the appellant. It was not available and the Judge cannot be said to have made a material error of law if, as I find, on the material available no reasonable Tribunal could have come to a different conclusion.

16. The decision is a succinct one that reflects the lack of evidence available to the First-tier Tribunal.

Decision

17. I do not find that the decision of the First-tier Tribunal contains a material error of law.
18. I do not set aside the decision of the First-tier Tribunal.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date: 24 August 2015