



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

Appeal Number: IA/43815/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 April 2015**

**Determination  
Promulgated  
On 1 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

**MATTHEW COYLE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Jones of Counsel by Direct Access

For the Respondent: Ms A Fijiwala of the Specialist Appeals Team

**DECISION AND REASONS**

**The Appellant**

1. The Appellant is a citizen of Australia born on 23 December 1991. On 25 July 2012 he entered the United Kingdom as a Tier 5 (Youth Mobility) Migrant. On 10 September 2013 before expiry of his Tier 5 leave he applied for further leave outside the Immigration Rules on the basis of his private life in the United Kingdom. His application also included a claim for

a Certificate of a Right of Entitlement of Abode based on his British ancestry.

### **The Respondent's Decision**

2. On 8 October 2013 the Respondent refused the Appellant's application and decided to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The Respondent considered the Appellant's circumstances by way of reference to paragraph 276ADE of the Immigration Rules and found that he did not meet any of the requirements. Further, treatment for his mental condition was available in Australia and there were no exceptional circumstances warranting consideration of his application under Article 8 of the European Convention outside the Immigration Rules. Neither the Respondent's decision nor the letter giving reasons for the decision made any reference to the Appellant's ancestry claim.

### **The Grounds for Appeal**

3. On 23 October 2013 the Appellant in his own name lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds refer not only to his personal circumstances but also to his ancestry claim.

### **The First-tier Tribunal Hearing**

4. Mr Jones represented the Appellant at the First-tier Tribunal hearing before Judge of the First-tier Tribunal McIntosh. By a determination promulgated on 24 July 2014 the Judge dismissed the appeal based on his claim to a private life by way of reference to paragraph 276ADE and Article 8 of the European Convention outside the Immigration Rules.
5. The Appellant sought permission to appeal which, on 9 October 2014, Judge of the First-tier Tribunal Chohan refused on the basis that the grounds did not disclose any obvious errors of law and the Judge at paragraphs 19-31 of her decision had set out in full her findings upon which the conclusions she reached were open to her.
6. The Appellant again in person renewed his application for permission to appeal to the Upper Tribunal and on 21 January 2015 Upper Tribunal Judge Kekić granted permission to appeal on the basis it was arguable the Judge's consideration did not take account of the issues listed in the grounds and did not properly assess his mental health and the impact of removal on it.
7. By a letter of 28 January 2015 the Respondent filed a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended. The response asserts the Judge took into account the relevant facts and made a sustainable assessment of the Appellant's circumstances and was entitled to reach the conclusions she did. Additionally, she had found the Appellant was not reliant on medication or treatment and that in any event treatment or medication would be accessible to him on return to Australia where he could relocate to a new area.

## **The Upper Tribunal Hearing**

8. The Appellant attended with his girlfriend and two other friends to support him. Mr Jones conceded there was no arguable error of law in the First-tier Tribunal's consideration of his claim under paragraph 276ADE of the Immigration Rules. However, he would argue that the Judge's consideration of the claim under Article 8 outside the Immigration Rules contained material errors of law. The Judge had failed to consider the claim fully and in particular that if the Appellant were removed from his support network which he had created in the United Kingdom, then his mental health would be severely affected. His support network was sufficiently effective to enable him to dispense with other treatment or medication. If this support were lost he would inevitably have to find support from elsewhere and would not be able in sufficient time to recreate a new support network in Australia where previously psychiatric treatment had not been effective.
9. Ms Fijiwala submitted this amounted simply to an attempt to re-argue the Appellant's case. The Judge's decision at paragraphs 11, 12 and 26 noted the Appellant's mental condition and at paragraph 31 that he was no longer receiving any treatment. Mr Jones responded that the Appellant was not receiving medical treatment in the United Kingdom because its need had been superceded by his having acquired a support network.
10. At the close of submissions I enquired what had happened to the Appellant's ancestry claim. The papers in the Tribunal file showed not only that it had not been addressed in the Respondent's reasons letter but it had not been argued before the First-tier Tribunal and consequently it was perhaps not surprising that the First-tier Tribunal decision was silent on the claim. Ms Fijiwala suggested the claim had not been raised until the Appellant had lodged notice of appeal but I referred her to page 28 of the Appellant's original application for further leave.
11. There was a discussion in chambers about the options available to deal with both the ancestry claim and the challenge to the First-tier Tribunal's decision on the claim under Article 8 outside the Immigration Rules. On resuming the hearing, I announced my decision to remit to the Respondent the whole decision for further consideration. I explained the effect to the Appellant and that my reasons for this decision which had been agreed to by both representatives in chambers would follow in this written decision.
12. The Judge had before her evidence of the Appellant's personal history including two attempts on his life to which she referred at paragraph 25 of her decision. She noted that in the United Kingdom he was not receiving medication or treatment. She referred at paragraph 23 to the submission that the Appellant did not need treatment or medication in the UK because of his support network but made no connection between the two at paragraph 31 when she concluded as a single adult male he would be able to re-establish a life in Australia. She failed to engage with the letter of 9

June 2014 from the Appellant's clinical psychologist in Australia and in particular the paragraph at the foot of the first page of the letter at pages 75 and 76 of the Appellant's bundle. Her treatment of the claimed risk of suicide was not in accordance with the learning in *J (Sri Lanka) v SSHD [2005] EWCA Civ. 629* and her assessment of the claim under Article 8 outside the Immigration Rules failed to follow the recommended steps described in *R (Razgar) v SSHD [2004] UKHL 27*. These amount to material errors of law such that the decision must be set aside in its entirety.

13. Turning to the Appellant's ancestry claim it is evident that this has never been considered by the Respondent although it was raised in the original application. If the Respondent was not prepared to consider the ancestry claim at the same time, as part of the application for further leave outside the Immigration Rules, then it would have been procedurally fair for the Respondent to have notified the Appellant of this and to have required him to make a separate or parallel application before reaching the decision now under appeal. For these reasons the decision of the First-tier Tribunal must be set aside and, as the parties agreed, the most practicable course is for both aspects of the appeal to be remitted to the Secretary of State for reconsideration.

### **Anonymity**

14. There was no request for an anonymity direction and having considered the appeal I find none is warranted.

### **NOTICE OF DECISION**

**The decision of the First-tier Tribunal contained an error of law such that it is set aside and the following decision is substituted:-**

**The appeal is remitted to the Secretary of State for further consideration.**

Signed/Official Crest

Date 28. iv. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal

### **TO THE RESPONDENT: FEE AWARD**

The appeal has effectively been allowed because it has been remitted. I have considered whether to make a fee award and in all the circumstances find that it is not appropriate to make any fee award.

Signed/Official Crest

Date 28. iv. 2015

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal