



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

Appeal Number: IA/50286/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 26 November 2015

Promulgated

On 22 December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

L. M. S. A.

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A Smith, Counsel, instructed by Danielle Cohen
Immigration Law Solicitors

For the Respondent: Miss E Savage, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Lagunju which was promulgated on 8 June 2015.
2. The background facts can be shortly stated. The appellant entered the United Kingdom on 23 March 2014 with valid leave to remain until 23 September of that year and made an application for further leave on the basis of her family and private life. The matter was considered under the terms of the Immigration Rules and was rejected and the judge rejected the appellant's alternative case under Article 8.
3. The appellant now appeals to the Upper Tribunal pursuant to the leave of First-tier Tribunal Judge Saffer dated 19 August 2015. The substantive ground of appeal advanced before me today is that the judge either made

a material mistake of fact or failed to take material evidence into account. This concerns principally the three grandchildren of the appellant and in particular health issues, namely autism, from which one particular grandson, A, suffers. That ground was developed before me and it was argued that throughout the judgment reference is made either to the expression "grandchild" in the singular or to the expression "grandson" and nowhere in the decision does it appear to be acknowledged that there were in fact three grandchildren concerned.

4. I might have come to the view that any dissonance between the singular and the plural may not have been material because the focus of both the evidence and the submissions before the First-tier Tribunal Judge were to one particular grandchild and to his health issues. In those circumstances the judge might have been forgiven for using the singular as a type of judicial shorthand, or for focusing attention on the one grandchild most affected, on the basis that what applied to him would apply equally to the others.
5. However, on the facts of this particular case, I cannot be satisfied that that was the intention of the judge. The reason being that if limiting the discussion to grandchild singular as opposed to grandchildren plural, was a means of focusing on A, one would have expected the decision to condescend to some level of detail about A's health condition.
6. There was before the judge a significant volume of evidence which dealt with these health issues, none of which is considered addressed in the decision. I have been taken to a letter from Mr Jon Hewitt dated 10 March 2015 which appears at page 1 of the appellant's supplemental bundle before the judge which contains relevant and cogent material.
7. The content of that letter (which was before the judge though not referred to in the decision) reads as follows:

"A relies very heavily on close relationships with specific people. A cannot make neurotypical relationships with people due to his autism and therefore has a much greater reliance on those who work with him and his close family. His grandmother has a particular link with A and this is extremely positive for him. He has developed appropriate attachments to his grandmother, something that A finds incredibly challenging. This very positive relationship he has with his grandmother helps to reduce A's anxiety.

I would be very concerned if A's grandmother was not around to help support him and the family. I believe that A's anxiety would be heightened greatly with her absence. With increased anxiety A will present with the behaviours mentioned above which will put increased stress on A's family and will also impact negatively on his development and progress."

8. Those significant issues might suggest that there was a bond and an affinity between grandmother and grandchild which was more than usually

close and factual findings on that evidence by the judge might have fed into the proportionality analysis under Article 8 adopting the progressive approach commended in the case of **Razgar**. The difficulty is that although on two occasions in the decision (both in paragraph 43 and in paragraph 46), the judge makes reference to “the close and loving relationship” and “a stable and loving environment” respectively, the judge does not address the specificity of the particular medical matters which appear from Mr Hewitt’s letter, nor does the judge consider whether the nature of this particular relationship between grandmother and grandchild might be relevant in the Article 8 proportionality assessment and might lead to a different conclusion being reached.

9. Because of the silence of the judge on these matters and the lack of any factual findings on clearly relevant material, I am left with the clear impression that this case did not receive the anxious scrutiny which it ought properly to have been given and that omission, in my judgment, is an error of law. In those circumstances the decision demonstrates must be revisited.
11. It is argued on the appellant's behalf that the matter should be remitted to a First-tier Tribunal rather than being remade here in the Upper Tribunal. The Presenting Officer for the Secretary of State takes a neutral view on which is the more appropriate disposal. In my judgment, mindful that the matters on which the factual findings are lacking are fundamental to the Article 8 balancing exercise, it seems to me that the more appropriate course is for the matter to be remitted to a First-tier Tribunal and in those circumstances it would not be appropriate for me to give any view or indication as to how that Article 8 proportionality test might fall to be determined.
12. In those circumstances this appeal is allowed on Article 8 grounds and will be remitted to the First-tier Tribunal for a redetermination. I do not anticipate that the issue of Appendix FM, paragraph 276ADE, will be an issue before the First-tier Tribunal because that has not been the subject of any challenge in this Tribunal.

Notice of Decision

Appeal allowed. Matter remitted for redetermination by First-tier Tribunal.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill*
Deputy Upper Tribunal Judge Hill QC

Date

11 December 2015