



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

Appeal Number: VA/04174/2014

THE IMMIGRATION ACTS

**Heard at Bradford
On 15 June 2015**

**Decision & Reasons
Promulgated
On 3 July 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**KARTHIK RAJARAMAN SARASWATHY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - CHENNAI

Respondent

Representation:

For the Appellant: Mrs A Rajaraman (sponsor)

For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Karthik Rajaraman Saraswathy, was born on 11 September 1988 and is a citizen of India. He has applied for entry clearance to the United Kingdom as a visitor. His application was refused by the ECO

(Entry Clearance Officer) at Chennai on 23 July 2014. The appellant appealed to the First-tier Tribunal (Judge Oakley) which in a determination determined on the papers 16 January 2015, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Judge Oakley's determination is flawed by legal error. At the date of his decision, there was no basis on which the appellant could appeal to the First-tier Tribunal under the Immigration Rules, the only basis upon which Judge Oakley has determined this appeal. The decision makes no mention of the appeal on human rights and/or race relations grounds. I am, therefore, satisfied that the decision of the First-tier Tribunal is flawed by legal error and have remade the decision.
3. I do not find that the Entry Clearance Officer has racially discriminated against the appellant. The decision was purely on the basis that the appellant, having made an application to settle permanently in the United Kingdom in June 2013 (which had been refused and a subsequent appeal dismissed), it was likely that the appellant was not a genuine visitor to the United Kingdom and would not return at the end of his proposed visit. I appreciate that the appellant may have experienced feelings of isolation and alienation as a consequence of the immigration decision, but that does not amount to racial discrimination.
4. The remaining ground is under Article 8 ECHR. I acknowledge that it is unusual where an entry clearance case can succeed under Article 8 where it has not succeeded under the Immigration Rules. I am aware, however, that the duty rests on the United Kingdom Government to promote (as opposed to refraining from interfering with) the family life of individuals where Article 8 is engaged. Mrs Pettersen, for the respondent, was right to point out that the appellant is an adult as is his sponsor and sister, Mrs Rajaraman. However, this is to ignore the fact that the appellant is autistic and has learning difficulties. I was very impressed by Mrs Rajaraman and what she said to me at the Upper Tribunal hearing. I consider it likely that there is an especially strong bond and (manifest when he is in his sister's presence) a tie of emotional dependency between the appellant and Mrs Rajaraman. The appellant and Mrs Rajaraman's mother has died and the appellant is cared for in India by their father who is not always in good health. I find that Article 8 as regards family life is engaged although the appellant may only succeed if he can show the importance and strength of that family life to render the decision to deny him entry clearance disproportionate when considered in the light of the public interest concerned with denying him entry clearance. It is here that the reason used by the Entry Clearance Officer for refusing the application under the Immigration Rules (i.e. that the appellant had applied for permanent residence and was therefore not likely to leave the United Kingdom at the end of his visit) is a factor which must be considered in the proportionality "balancing" exercise. However, it is not, in this instance, a factor which I find should strengthen the weight given to the public interest given that the appellant has visited the United Kingdom on numerous occasions and has always returned to India and,

most significantly, has done so twice following Judge Turnock's decision to dismiss the permanent residence appeal in 2013. As Mrs Rajaraman pointed out, had the appellant intended to remain in the United Kingdom, then he would have done so on one of those occasions. Bearing that in mind and acknowledging that these are unusual circumstances and having regard also to all the evidence, I am satisfied that the promotion of family life between the appellant and his sister in the United Kingdom is of such importance that, taken together with the appellant's previous exemplary conduct during visits to this country, it outweighs the public interest concerned with denying him entry clearance and renders the immigration decision disproportionate. I therefore allow the appeal under Article 8 ECHR.

5. However, as I pointed out to Mrs Rajaraman, I am allowing the appeal on the basis of my assessment that the appellant will return to India at the end of his visit. If he chooses to remain in the United Kingdom as an overstayer, it is very unlikely indeed that he will succeed in any application he may make to the Secretary of State or in any subsequent appeal. Such a course of action would also inevitably cause the appellant and his family a great deal of unnecessary distress. Furthermore, I am satisfied that Mrs Rajaraman is aware that, if her father is unable to cope with looking after the appellant in years to come, she will have to make arrangements in India and certainly cannot rely on any assumption that the appellant would then be admitted to live with her permanently in the United Kingdom. However, I have determined, for the purpose of this appeal that it is likely that the appellant will return to India following his visit to his sister.

NOTICE OF DECISION

The determination of the First-tier Tribunal which is dated 16 January 2015 is set aside. I have remade the decision. This appeal is allowed on human rights grounds (Article 8 ECHR).

No anonymity direction is made.

Signed

Date 2 July 2015

Upper Tribunal Judge Clive Lane