



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/43893/2014

THE IMMIGRATION ACTS

Heard at Field House
On 20 June 2016

Decision & Reasons Promulgated
On 5 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

[F N]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Subramanian, Lambeth Solicitors
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant whose date of birth is [] 1953. She is a national from Mauritius. She appeals against a decision made by the First-tier Tribunal

(Judge Stott) promulgated on 25 September 2015 dismissing her application for leave to remain on immigration and human rights grounds.

2. The First-tier Tribunal (FTT) stated that the burden was on the appellant to show the existence of exceptional and compelling circumstances for discretionary leave to be considered outside of the Rules. It was accepted that the appellant could not meet the requirements of the Immigration Rules. An application for leave to remain as a dependent relative was submitted at the time of the hearing, but as the appellant would not meet the requirements under suitability because she was in the UK, this was not pursued.
3. The appeal proceeded under Article 8 ECHR outside of the Rules. The FTT found that the appellant was suffering from depression, high blood pressure and diabetes and had lost some £8,000 in savings and had lost her home in Mauritius [8/9].
4. At [18] the FTT did not accept that the appellant lost her savings in a pyramid fraud and that the loss of her home was not connected to any fraud either. The appellant was paid a pension and in receipt of financial support from her adult children in the UK and could be maintained in Mauritius. There was no medical evidence of any health difficulties and there was no evidence showing a lack of treatment available in Mauritius. The FTT found that the appellant in her role as grandmother would be able to continue making visits to and from the UK.
5. The FTT considered the issue of the mental health of the appellant's daughter and whilst accepting that she helped to look after her daughter, it found and concluded that the evidence failed to show that she was a carer for her daughter. It was acknowledged that the appellant's daughter suffered from mental ill health, in particular depression, and was due to have an operation for weight problems. The FTT took into account that the daughter was cared for by her brother who had limited leave to remain in the UK.
6. In [18(g) and (h)] the FTT considered the issue of proportionality and concluded that any interference was proportionate. In this regard the FTT focused on whether or not the appellant established the burden of showing that her situation was such that it would be disproportionate for the respondent to require her to return to Mauritius.

Grounds of Application for Permission

7. In detailed and somewhat generalised grounds it was contended that the FTT failed to give anxious scrutiny to the appellant's circumstances, in particular that she lived alone and had no relatives to care for her. The FTT failed to consider the sense of grief and isolation suffered by the appellant. Reference was made to various cases including **GS (Article 8 - public interest not a fixity) Serbia and Montenegro [2005] UKAIT 00121**, **Huang** and **EB (Kosovo)**. In relation to Article 8 reference was made in paragraph 15 to family life and in paragraph 16 to **Beoku-Betts v SSHD** which it was argued was overlooked by the FTT.

Permission to Appeal

8. Permission to appeal was granted by First-tier Tribunal Judge E M Simpson on 18 May 2016. The permitting judge granted an extension of time and further granted permission in the following terms:

“Permission to appeal is granted notwithstanding the manifest lack of rigour of the grounds advanced, because the substance of the appeal concerned Article 8 of the ECHR, family life, and there appeared that the decision lacked a structured and meaningful assessment following the **Razgar** guidelines and Article 8 authorities amounting to an arguable error of law.”

Application for an Adjournment

9. Mr Subramanian made an application for an adjournment on the grounds that the appellant was unable to attend the Upper Tribunal hearing because her daughter, who had a history of mental ill health, was ill and required to be taken to hospital today. There was no medical evidence in support of the application. The appellant's representative accepted that in the light of the fact that this was an error of law hearing, it was not necessary for the appellant to attend.

10. Mr Whitwell made no observations.

Decision re adjournment

11. I refused the application for an adjournment. There was no medical evidence produced and no explanation as to why the daughter had to go to hospital on the day of the hearing in the event that it was an emergency. It was not necessary for the appellant to attend the error of law hearing as she would not be required to give evidence. There was no unfairness caused for the appellant by proceeding with the hearing. In the event that the Tribunal required further evidence or her attendance that could be considered as and when the situation arose.

Submissions re: Error of Law

12. Mr Subramanian submitted that the central point for consideration was the failure by the FTT to follow the Article 8 and **Razgar** guidelines. The FTT failed to adopt a structured approach to the Article 8 assessment and in particular failed to give any weight to the issue of the appellant's daughter's mental ill health. It was submitted that the fact that the appellant took care of her daughter was a factor that had been disregarded by the FTT in considering Article 8 family life.
13. Mr Whitwell submitted that the FTT at [18(h)] properly concluded that any interference caused by removal was not disproportionate. The appellant had not been disadvantaged by any failure of approach under **SS (Congo)**. It was conceded

that the FTT had not carried out the formulaic step-by-step **Razgar** process but notwithstanding, it was submitted that the proportionality assessment had been considered adequately and would have been linked also to an assessment of compelling and compassionate circumstances following **SS (Congo)**. Mr Whitwell further argued that the FTT had taken into account the appellant's daughter's health in [18(e)]. The evidence in the appellant's witness statement was that she looked after her when she could and that she was not the main carer, was not inconsistent with the finding in [18(e)].

14. Mr Whitwell argued that any error was therefore not material as the FTT properly concluded that the interference was proportionate.
15. Mr Subramanian responded that the proportionality exercise was incomplete without assessing the need to have the appellant present in relation to the maintenance of her daughter's health and that the FTT failed to take into account evidence at paragraph 14 of the appellant's witness statement. He relied on paragraph 45 of **SS (Congo)**.

Discussion and Decision

16. The starting point is the grounds of application for permission to appeal. The grounds are generalised and lacking in specific detail. Yet permission was granted by First-tier Tribunal Judge Simpson on the basis that the substance of the appeal under Article 8 ECHR lacked a structured and meaningful assessment following the **Razgar** guidelines and Article 8 authorities. It is on that ground that I proceed to deal with the error of law issues. The FTT considered the appeal outside of the Rules and acknowledged the need to consider the existence of compassionate and compelling circumstances under Article 8 in accordance with **SS (Congo)**. The Decision and Reasons summarised the appellant's case which is that she is penniless, vulnerable to depression and has lost her home and finance in Mauritius and no longer has the resources to live and support herself in Mauritius. The respondent's reasons for refusal are also set out in the determination at [11 to 17].
17. The main findings of fact are at [18(a) - (h)] in the decision. I am satisfied that the FTT failed to follow the step-by-step approach in **Razgar**, namely to follow the five questions in relation to private and family life.
18. The burden is on the appellant to show that she has a private or family life capable of engaging Article 8 ECHR and thereafter it is for the respondent under Article 8(2) to show why the public interest justifies the interference to that right i.e. proportionality.
19. As a precursor to the Article 8 assessment the FTT must consider whether or not there are circumstances not covered by the Rules for leave outside of the Rules to be considered. The FTT has not followed structured approach and it is difficult to ascertain whether or not the decision incorporated **SS (Congo)** guidance in

concluding that there are lacking sufficiently compelling and compassionate circumstances to justify Article 8 outside of the Rules or whether the FTT has simply gone beyond that stage and in considering Article 8 erred by omitting to follow the step-by-step process. The end result is that either way the decision shows an error of law.

20. The issue for consideration by this Tribunal is whether or not the error of law was material. The evidence before the FTT and the findings made are not challenged. Mr Whitwell submitted that if it is accepted that the first four of the **Razgar** stages are met, the outstanding issue remains to be proportionality. I accept this submission. Having regard to the findings made on the evidence and in considering proportionality, I am satisfied that the FTT's decision was the only conclusion available to it on the evidence before it.
21. Mr Subramanian raised the question of the appellant's daughter's mental ill health and argued that the FTT failed to take this into account in considering the appeal. I disagree. The appeal proceeded on the basis that it was the appellant who was dependent on family members in the UK, indeed an application was made for her to remain as a dependent relative. The evidence as regards her daughter was accepted by the FTT who found that she was suffering from depression and about to have an operation for weight problems. There was medical evidence to this effect which confirmed that her brother was her carer. Whilst accepting that no specific reference was made or findings made as to the precise extent of the relationship between the appellant and her daughter, it remains clear that the appeal was not argued on the basis that there was a relationship of dependence between them above and beyond the normal family ties.
22. Proceeding on the ground identified in the grant of permission, I find that there is no material error of law in the decision and Reasons. The Decision and Reasons shall stand and the appeal is dismissed.

No anonymity direction is made.

Signed

Date 1.7.2016

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1.7.2016

GA Black
Deputy Upper Tribunal Judge G A Black