



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/08582/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 12 November 2018

Decision & Reasons Promulgated  
On 27 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR ROSHANPRAKASH BHOOJEDHUR  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance  
For the Respondent: Mr Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Mauritius born on 27 May 1993. His sister is a British citizen who suffers, amongst other things, from bipolar disorder and depression.
2. The appellant entered the UK on 22 March 2015 with entry clearance as a visitor valid for six months. He returned to Mauritius and applied for a further visa which was granted with entry clearance valid until 9 December 2015. On 8 December 2015 he applied for leave to remain in the UK in order to care for his sister. On 14 March 2016 the application was refused on the basis that the appellant was unable to satisfy any of the routes to leave to remain under the Immigration Rules, and that his sister's

health problems did not constitute exceptional circumstances that would warrant a grant of leave outside the Rules.

3. The appellant appealed to the First-tier Tribunal where the appeal was heard by Judge of the First-tier Tribunal Abebrese. In a decision promulgated on 4 July 2018 the judge dismissed the appeal. The appellant is now appealing against that decision.
4. Before the First-tier Tribunal the appellant argued that the appeal should be allowed outside the Immigration Rules because refusing him leave to remain would be inconsistent with the Home Office's policy in respect of carers found at Chapter 17 Section 2 of the Immigration Directorate Instructions. The judge considered the policy and concluded that the appellant did not satisfy its requirements. The judge stated at paragraph 25 of the decision:-

"The appellant is claiming to come within the policy but at the hearing it became apparent that the authorities have not as at the date of the hearing recognised him as a person who is residing with his sponsor or even providing her with any assistance. The appellant claimed that he had written to them but that they had not responded (sic) to his letter. The appellant however, could not provide me with a copy of the letter which he had written to the Council and this therefore cast (sic) doubt as to whether he had actually written to them. It appears that the Council are not aware that the appellant is residing on the premises with the sponsor there is no evidence before me to suggest otherwise and therefore the respondent could not in the circumstances have granted the appellant discretionary leave."

5. The judge proceeded to consider the appellant's case under Article 8 ECHR. The judge found at paragraph 29:-

"The evidence is that the appellant resides with her in the flat. I accept the evidence that the appellant resides with [his sister] but he does so without the consent of the local authority as he has not provided evidence to suggest that they are aware of his presence. The sponsor and the appellant in my view have a normal brother and sister relationship and it is not one which is over and above normal emotional ties between siblings. The sponsor's (sic) is also under the supervision of her doctor and a psychiatrist so her medical needs are being dealt with by experts. The relationship which she has with her brother is in essence friendship she says that he provides her with company and without her presence her condition would worsen. I do not find that the evidence of both the appellant and the sponsor suggest that the decision of the appellant is disproportionate. The evidence before me is not exceptional and this appeal is dismissed under Article 8 of ECHR."

6. The appellant did not attend the error of law hearing. Prior to the hearing a fax was received from the appellant's representatives requesting that the appellant be excused from attending the hearing and that the matter be decided in light of the permission application grounds.
7. In light of the aforementioned letter I proceeded to hear submissions from Mr Whitwell, notwithstanding the absence of the appellant or a representative on his behalf.

8. It is argued in the grounds of appeal that the judge erred by failing to accept that the appellant had requested the local authority's permission to reside with the sponsor. Attached to the grounds was correspondence with the local authority that was not before the First-tier Tribunal concerning the residential arrangements. Mr Whitwell argued that this submission has no merit as the evidence relied on in the grounds was not before the First-tier Tribunal and therefore the judge cannot be said to have erred by failing to have regard to it. He also maintained that it was a matter for the judge to decide whether or not to accept the evidence before him (which consisted only of the witness evidence of the appellant and sponsor) as to whether the council were aware of the appellant residing with the sponsor. I agree with Mr Whitwell that it is not a sustainable argument that the judge erred by failing to have regard to documents that were not before him. It was for the judge to determine, based on the evidence before him (which did not include the correspondence appended to the grounds of appeal), whether to accept the appellant's claim to have informed the local authority that he was residing with his sister. The judge's conclusion on this point was therefore open to him.
9. The grounds also argue that the judge erred by finding that the respondent's carer's policy would only apply in the event that a local authority was aware of support provided by an applicant when there is no such requirement in the policy. Mr Whitwell did not challenge this ground but maintained, for the reasons set out below, that any errors made by the judge in respect of the carer's policy were not material.
10. A further argument in the grounds is that the judge mistakenly characterised the appellant as an overstayer, at paragraph 28 of the decision. I do not accept that there is a factual basis for this submission. At paragraph 28 the judge observed, correctly, that the appellant arrived in the UK as a visitor with the expectation that he would leave the UK upon expiry of his leave. This is an accurate statement and does not imply that the appellant is an overstayer. Indeed, it is clear from the analysis undertaken by the judge in paragraph 28 - and from reading the decision as a whole - that the judge recognised that the appellant applied whilst he had leave and therefore was not an overstayer.
11. The final argument in the grounds is that the judge referred to sections of the respondent's carer's policy that were not relevant. There is merit to this submission. At paragraph 24 the judge referred to section 17.10 as being directly applicable. However, this section is irrelevant as the appellant's sister is a British Citizen and Section 17.10 applies only to applications for leave to remain to care for relatives who do not have settled status in the UK. Mr Whitwell accepted that the judge referred to the wrong paragraphs of the carer's policy. However, he maintained that although this is an error, it is not material because the sponsor's circumstances are not such as to bring the appellant within the ambit of the carer's policy in a way that would give rise to a conclusion that removal of the appellant from the UK would be a disproportionate interference with family life enjoyed by him and his sister.
12. Section 17.3 of the carer's policy provides that it would normally be appropriate to grant leave to remain for three months to care for a sick relative on the strict

understanding that during this period arrangements will be made for the future care of the patient by a person who is not subject to Immigration Rules.


13. Section 17.4 of the policy states that where an application is received requesting a further period of leave to continue to care for a sick relative the applicant must produce, amongst other things, a letter from the local social services department where they are known to be involved, advising of their level of involvement, the perceived benefits of the presence in the UK of the applicant, and an explanation as to why suitable alternative care arrangements are not available, along with further evidence that alternative arrangements for the care of the patient have been, or are being, actively explored.
14. None of the evidence required under Section 17.4 was before the First-tier Tribunal. Nor did the appellant provide any evidence to show that arrangements were being made for a person not subject to immigration control to care for his sister, as required by Section 17.3. Given the absence of evidence to establish compliance with Sections 17.3 and 17.4 of the respondent's policy, on any legitimate view the judge was correct to find that the appellant did not satisfy the requirements of the policy. There was therefore no error of law in assessing the proportionality under article 8 ECHR of the appellant's removal from the UK on the basis that he was unable to satisfy either the Immigration Rules or the respondent's carer's policy.
15. The appellant has not established that the judge made a material error of law and therefore his appeal is dismissed.

### **Notice of Decision**

The decision of the First-tier Tribunal does not contain a material error of law and stands.

The appeal is dismissed.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 20 November 2018