



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/27712/2016

THE IMMIGRATION ACTS

Heard at Field House.
Provided Orally at the Hearing.
On 25th July 2018

Decision & Reasons Promulgated
On 8th August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

MR SAIFUL HAQUE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Kaihira of Counsel instructed by M-R Solicitors (High Road)
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Clarke sitting at Taylor House on 15th March 2018. The judge had dismissed the Appellant's appeal whereby the Appellant had sought to remain in the United Kingdom pursuant to Appendix FM of paragraph 276ADE and with reference to Article 8 ECHR. The Appellant's case was that he was here in the United Kingdom caring for his grandmother. The grounds of appeal stated as follows:

- (1) The judge had failed to consider the fact that the Appellant had provided documentary evidence to confirm that he had been in the United Kingdom for over ten years and that he was the sole carer of his grandmother who needs his care.
 - (2) The judge had stated that the Appellant does not fall within the Immigration Rules Appendix FM or paragraph 276ADE but the judge has not considered the fact that he would come outside the Immigration Rules.
 - (3) That the documentary evidence submitted confirmed that the Appellant was the main and sole carer of his grandmother and this is a case where the Immigration Judge should have used his discretionary powers outside of the Immigration Rules but had failed to do so.
 - (4) The Immigration Judge did not give proper weight to the Appellant's case and did not look at all the oral evidence and documentary evidence which was provided to the Immigration Judge thereby Article 8 had not been properly dealt with.
2. In his submissions today Mr Kaihira said that the decision was vague and inadequate. The heading section "findings" was merely to regurgitate what the Home Office had said. There were no clear findings by the judge. There was real support from the Appellant to show the assistance he was providing to his grandmother and which was thereby crucial for the balancing exercise for the purpose of Section 117B. There was no clear finding of fact as to the medical evidence. The Appellant did provide crucial care to his grandmother. It cannot be said that Section 117B should be applied in a way that was suggested by the Secretary of State and it could not be said that there was real weight that should be attached to private life. The Appellant was looking after his grandmother. The Appellant has a relationship with his grandmother which was extenuated and practicalised in the way the amount of care that he provides. The test was one of compelling circumstances. The private and family life should only take the need for immigration control by virtue of the fact that there was a clear finding. There was insufficient weight which was attached to the medical evidence before the judge. There was a material error of law and that the judge who granted permission was right. This was not a criminal case and that therefore that had to be taken into account.
 3. In relation to paragraph 8 of the judge's decision that was no more than a summary of the papers that were before the judge. At paragraph 9 the judge strayed into the arena. There was no basis for the judge to seek evidence or information from Tower Hamlets or anyone else. The conclusion was reached on the basis of the lack of evidence.
 4. Paragraph 11 showed that there was emotional support from other family members but Mr Kaihira said that in his view most of that was assertions. It was contrary to the medical evidence. Why did the judge reach that decision? It was urged that I should

conclude that the decision was flawed and that it failed to properly address the Rules. The Appellant had been here for ten years and I was asked to allow the appeal.

5. Mr Melvin said he relied on his Rule 24 response. He said the grounds had no merit whatsoever. The Appellant had been an overstayer for some length and that he had tried to align himself to his grandmother. There was no evidence from the grandmother. The judge had looked at the medical evidence but the issues in respect of Section 117B had been addressed. In any event at paragraph 11 was clear. There was reference to the English language and that he cared for himself. He had formed his relationship with the grandmother when his own stay was precarious. It was clear that there was an attempt to contact Tower Hamlets but there was nothing from them. Indeed this was a case in which the Respondent had contacted Tower Hamlets but they were not able to provide the support in the evidence which the Appellant was contending for.
6. In my judgment and with the respect to broad range of submissions on behalf of the Appellant this appeal has to be dismissed. In my judgment, the grounds are hopeless. The Tribunal has to be satisfied on **R (Iran)** principles that there is a material error of law. There is not. It was made abundantly clear at paragraph 8 of the Judge's decision that the medical evidence was referred to. It is there and referred to within paragraph 8. Where it is submitted that the judge was merely setting out a summary of the papers that too is wrong. The judge does set the list in terms but that is what was being expressed by the family members. I see nothing wrong with that paragraph at all. Certainly nothing which can be said to be a material error of law.
7. Paragraph 9 of the Judge's decision notes that there was no letter of support from the grandmother herself and that this remained the case as at the day of the hearing. That is factually correct there was nothing from the grandmother and yet she is the one apparently being cared for. I see no material error of law in that finding. Further there was no evidence from Tower Hamlets. Again, on that too the Judge was correct. It has to be remembered that it was within the Respondent's Refusal letter from some time before that the issue of Tower Hamlets Council was raised. It is said within the refusal letter dated 6th December 2016 as follows:

"Furthermore it is noted that Tower Hamlets Adult Services tried to make an assessment of your grandmother. Tower Hamlets Adult Services wrote a letter to your grandmother on 16th November 2016 and did not receive a response. They made an unannounced visit to your grandmother's home on 21st November 2016 and failed to make contact. As the officer failed to gain contact with your grandmother the Adult Services' case had been closed. It is considered that Tower Hamlets Adult Services have not been provided with the evidence of the claimed high level of dependent care required by Mrs Bibi."
8. As I say, that was in 2016. This appeal was heard in March 2018 and I am astounded that this was not dealt with by the Appellant. In my judgment the judge was perfectly entitled to make the finding that she did. I do not accept the submission made today

that the judge “strayed into the arena” by asking about information from Tower Hamlets. The judge was perfectly entitled to ask why this had not been provided especially since the refusal letter was from 2016 and which had clearly and fully raised the matter.

9. Mr Kaihira says that in relation to paragraph 11 that the Appellant provided emotional support for his grandmother. What I have found very difficult in this case is that it is abundantly clear and unchallenged that the Appellant’s grandmother has very many other relatives including adult children here in the United Kingdom and it simply has not been explained why they cannot care for their grandmother in the circumstances which have been presented. It may well be, just like most adult children and grandchildren, that they work or they have their own family commitments but that is no different to the millions of other families within the United Kingdom. It is not sufficient to say that instead this Appellant who is an overstayer can provide the assistance instead. In my judgment it is abundantly clear that there is no merit whatsoever to the Appellant’s grounds and I come to the clear decisive view that the appeal has to be dismissed.

Notice of Decision

The decision of First-tier Tribunal Judge S J Clarke stands thereby when the appeal was dismissed. The Appellant’s appeal remains dismissed.

No anonymity direction is made.

Signed: A Mahmood

Date: 25 July 2018

Deputy Upper Tribunal Judge Mahmood