



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

Appeal Number: IA/45136/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 11th April 2014

**Determination
Promulgated**

On 4th August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**S O O
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Charles of Leslie Charles Solicitors

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant before the First-tier Tribunal is a citizen of Nigeria. I have considered whether any of the parties to the proceedings requires the protection of an anonymity direction. The appeal impacts directly upon

the interests and rights of a child. In order to protect those interests and taking account of all the circumstances I do consider it necessary to make an anonymity direction.

2. This is an appeal by the respondent against the decision of First-tier Tribunal Judge Crawford. However for the purposes of the present determination I have kept the designation of the parties as they appeared in the original determination.

Immigration history

3. The appellant had entered the United Kingdom on 6 March 2005 as a student. His leave as a student had been extended at various times until 31 January 2009. In October 2008 the appellant had made application for an EEA residence card. That application had been refused in May 2009. The appellant made two further applications for an EEA residence card which were likewise refused. On 17 June 2011 the appellant was issued with an IS150A notice indicating that he was an overstayer and that he was to be removed from the United Kingdom. The appellant made further applications for an EEA residence card in July 2011 and December 2011, which were refused.
4. The appellant then made an application for leave to remain in the United Kingdom on the basis of his relationship with his partner and his daughter, who are British citizens.
5. The application was refused on 24 April 2013 and a decision made, which did not give the appellant an in-country right of appeal. Judicial Review proceedings were issued and as a result of those proceedings the respondent agreed to reconsider the appellant's application and make a new decision with an in-country right of appeal.
6. Thereafter the appellant's application was refused by letter of refusal and a decision was made to remove the appellant from the United Kingdom as an overstayer under section 10 of the 1999 Act, both dated 14 October 2013. The appeal against that decision appeared before Judge Crawford on 10 January 2014.
7. By decision promulgated on 10th February 2014 First-tier Tribunal Judge Crawford allowed the appellant's appeal on Article 8 grounds.
8. The respondent sought leave to appeal against that decision. By decision taken on the 28th February 2014 First-tier Tribunal Judge Warren Grant granted permission to appeal. First-tier Tribunal Judge Grant gave leave in respect of article 8.
9. Thus the appeal now appears before me is an appeal in the Upper Tribunal in the first instance to determine whether or not there was a material error of law in the original determination.

Legal submissions

10. The representative for the respondent sought to rely in the main upon the issues raised in the grounds of appeal. The grounds submit: -
- a) It is acknowledged that the appellant was seeking to remain in the United Kingdom on the basis of his relationship with his partner and child, who are both British citizens.
 - b) It is submitted that the judge has failed to deal with the fact that the appellant and his partner entered into a relationship at a time when the appellant's immigration status was precarious. It is submitted that that is a factor relevant to the proportionality exercise and the judge has failed to consider the same
 - c) The judge found that it was disproportionate for the appellant's partner and daughter to relocate to Nigeria with the appellant because they both suffered from sickle cell anaemia. It was submitted that the judge had relied solely on the evidence given by the appellant's partner as to the effects of that illness and her personal experiences of what she had suffered and others had suffered because of the illness in Nigeria.
 - d) It is submitted that the onus was on the appellant to produce evidence that effective treatment for sickle cell anaemia was not available in Nigeria. In that regard it is submitted that the judge's findings are "*imbalanced*" and failed to give adequate consideration to the interest in maintaining effective immigration control.
 - e) The judge failed to assess the income threshold in appendix FM as part of the article 8 assessment. It is submitted that the financial requirements are a factor within immigration control which is directly relevant to the decision to be taken and as such is for the democratically accountable government to set an appropriate level.
 - f) Further as is clear from the cases of Gulshan [2013] UKUT 00640 and Nagre 2013 EWHC 720 where an appellant does not and cannot meet the requirements of the rules article 8 should only be considered where there are compelling circumstances not recognised by the rules. In the present case such compelling circumstances were not identified. In the light of that the findings are unsustainable.
11. On behalf of the appellant it was submitted that the judge had properly considered the requirements of the rules and had thereafter gone on to consider family life under the rules and article 8 outside the rules. It was submitted that the judge had assessed material factors with regard to the

circumstances of the appellant's partner and child. Having considered all the evidence the judge had made findings of fact which directly related to whether there were exceptional circumstances justifying consideration of this matter outside the rules on Article 8 grounds.

Consideration of the issues

12. It is suggested within the grounds of appeal that the judge has failed to make material findings with regard to the requirements of the rules and that, as the appellant did not meet the requirements of the rules, the judge has failed to take that into account in assessing article 8 outside the rules. In line with the cases of Gulshan 2013 UKUT 640, Nagre 2013 EWHC 720 and Haleemudeen 2014 EWCA Civ 558 it is submitted that the judge should consider whether or not there are exceptional factors which justify consideration of this appeal outside the rules on Article 8 grounds.
13. Within paragraph 4 of the determination the judge has set out the requirements of the rules specifically the details within appendix FM and EX.1. Thereafter the judge has in the determination considered the letter of refusal of 14 October 2013 in detail [see paragraphs 5 and 6 covering several pages]. The judge in paragraph 8 specifically states that he has considered the bundles of evidence submitted by both parties. A judge does not have to identify each and every piece of evidence at each stage of a determination.
14. In considering the requirements of the rules the judge has in setting out the refusal letter identified all of the issues that have been raised by the respondent to show that the appellant did not meet the requirements of the rules. The judge was clearly aware of the requirements of the rules and those parts of the rules that the appellant did not meet.
15. The judge noted in paragraph 7 of the determination that in light of the matters set out it was conceded on behalf of the appellant that he did not meet the requirements of the immigration rules either appendix FM or paragraph 276 ADE.
16. In the letter of refusal it is quite evident that the appellant was not in the United Kingdom with any leave when he entered into his relationship the basis of the present application. The judge went on to make findings with regard to the substance of the relationship between the appellant and his partner including that the relationship, although there have been periods of separation, had been ongoing since 2007. The judge noted that since the birth of the child the appellant had been committed to the relationship and to his child. The judge had noted that both the partner and child suffered from a medical condition, namely sickle cell anaemia, and that the child was monitored by medical staff on a regular basis because of the condition.

17. The letter of refusal had considered the issues of article 8 outside the rules and found that there was nothing which warranted consideration of article 8 outside the rules.
18. Having noted that the appellant could not meet the requirements of the rules, the judge was clearly looking at the whole of the circumstances considering whether or not there were factors which justified consideration of the appeal on article 8 grounds under the Strasbourg jurisprudence and Razgar 2004 UKHL27.
19. On the basis of that evidence the judge was clearly satisfied that there were factors relevant to Article 8 justifying consideration of Article outside the rules. It was not challenged that the partner and child were British citizens. The judge considered the following the best interests of the child of the family; the medical condition of the appellant's partner and child; the fact that medical monitoring was in place to cope with the illness both suffered; the impact of removal on the family unit; and the possibility of removal of the family unit to Nigeria.
20. It is suggested that the judge should not merely have accepted what was claimed by the appellant and his partner as to the consequence for those suffering sickle cell anaemia in Nigeria.
21. The partner has available medical supervision but more specifically the child as set out in paragraph 11 of the determination is under medical supervision and has regular medical appointments for the blood tests to obviate the crises that can occur and are a symptom of sickle cell anaemia. The child has a regime which is currently in place to provide medical care and supervision for her.
22. The partner has personal experience of living in Nigeria. She is in the United Kingdom now as a nurse but had lived a major part of her life in Nigeria. It was part of her evidence that she had a family member that had died as a result of suffering from sickle cell anaemia and the susceptibility that that leads to other illnesses. The judge was not merely accepting what was said about the availability of treatment in Nigeria but was concentrating on the treatment being received in the UK.
23. The fact that the partner and child would not relocate and it was clearly not in the best interests of the child to relocate to Nigeria, where immediately there would be no medical monitoring were relevant factors the judge was entitled to take into account. The medical condition of the partner and child are significant factors warranting consideration of the appeal on Article 8 grounds outside the rules.
24. Although not explicitly stated the judge was clearly concerned with regard to the best interests of the child under section 55 of the 2009 Act and the medical interests of the child. The judge was entitled to find that such were factors that justified consideration of the appeal on Article 8 grounds outside the rules

25. Having considered all the circumstances the judge has gone on to make specific findings with regard to the elements of Article 8 outside the rules on the basis of the guidance given in the case of Razgar.
26. On the basis of the evidence presented the judge was entitled to find that there was a family life between the appellant, his partner and child. The judge was entitled to find that the decision would significantly interfere with that family life. The judge was clearly satisfied that the decision was in accordance with the law and for the purposes of maintaining immigration control.
27. Thereafter the judge has made findings of fact and determined that the decision is not in the circumstances proportionately justified. That was the findings of fact that the judge was entitled to make on the basis of the evidence presented.
28. In the circumstances there is no material error of law within the determination of the judge.
29. Even if the judge has failed to assess the issues with regard to article 8 properly for the reasons set out I find that consideration of Article 8 outside the rules is warranted in circumstances where the child of the appellant is subject to regular medical monitoring to obviate any risks of harm to the health of the child. There is a substantial and significant relationship between the appellant and his partner, which constitutes family life. The partner works in the United Kingdom as a nurse. The appellant assists the partner in caring for the child.
30. Clearly consideration could be given to the appellant himself returning to Nigeria and seeking to make application to enter. However in a situation in which child is clearly medically monitored because of her condition such a serious disruption in the child's life would be a major factor.
31. I have considered all of the evidence in the case. There is clearly a family life that exists between the appellant, his partner and child and the decision would clearly interfere with the same. Whilst the decision is in accordance with the law and for the purpose of maintaining immigration control, I would not in the circumstances have found the same proportionately justified.

Decision

32. The reasons set out I find that there is no material error of law within the determination and I uphold the decision to allow the appeal on article 8 grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure