



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

Appeal Number: IA/46205/2013

**THE IMMIGRATION ACTS**

**Heard at Sheldon Court, Birmingham**

**Determination**

**On 23 September 2014**

**Promulgated**

**On 30 September 2014**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ROBERTSON**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**And**

Appellant

**MR FAISAL YUSEF MOHAMED  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr D Mills, Senior Presenting Officer

For the Respondent: Ms H Masih, Counsel, instructed by JR Jones, Solicitors

**DETERMINATION AND REASONS**

**Immigration History**

1. The Appellant in this appeal was the Respondent at the First-tier Tribunal hearing on 7 May 2014. However, for ease of reference, the Appellant and Respondent are hereinafter referred to as they were before the First-tier Tribunal. Therefore Mr Mohamed is referred to as the Appellant and the Secretary of State is referred to as the Respondent.

2. The Appellant is a male citizen of Canada. His appeal against the decision of the Respondent to refuse his application for leave to remain on the basis of his private and family life was allowed by First-tier Tribunal Sangha (the Judge), the reasons for which are contained within his determination promulgated on 7 May 2014. The Judge dismissed his appeal under paragraph 276ADE of, and Appendix FM to, the Immigration Rules and allowed it under Article 8 directly applied.
3. The Respondent applied for permission to appeal on the basis that the Judge failed to apply **Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 640 (IAC)** and **Nagre [2013] EWHC 720 (Admin)** in that he did not first consider whether there were compelling or exceptional circumstances which made it appropriate to consider the appeal by applying Article 8 directly (the freestanding Article 8 assessment); he simply moved straight to the Article 8 assessment. Permission was granted on the basis that this was arguable.
4. A detailed Rule 24 response was filed by Miss Masih on behalf of the Appellant, in which she identified that the IDI 'Family Migration' dated July 2014, at section 1.0a confirmed that the provisions of Appendix FM were 'intended for a parent who has responsibility for or access to their child following the breakdown of their relationship with the child's other parent'. However, she submitted that the unchallenged findings were that the Appellant was not the biological father of the children (whose father had died in Somalia in 2006) but he was their stepfather; there was a parental relationship, it was genuine and subsisting and the Immigration Rules did not allow for consideration of these circumstances. The Immigration Rules were therefore not a complete code. Furthermore, the Appellant had established a private life in the UK and this was not recognised under the Immigration Rules because the focus under paragraph 276ADE was the Appellant's ties to Canada. She submitted that the Judge established compelling circumstances on the findings of fact made and he was entitled to consider Article 8 outside the Rules.
5. At the hearing, Mr Mills confirmed that he had read the Rule 24 response and that whilst the Judge appeared to have missed out the intermediate stage of identifying compelling circumstances (that is the particular factors which were not covered by the Rules), he had to accept that refusal would result in unjustifiably harsh consequences.
6. Whilst the determination could have been better structured, in view of the concession by Mr Mills, the finding that the decision would result in unjustifiably harsh consequences is not challenged, which is in effect an acknowledgement that there are compelling reasons for considering the case outside the Immigration Rules, although not specifically identified by the Judge prior to moving onto identifying the reasons why removal would result in unjustifiably harsh consequences.
7. In the circumstances, I find that there is no material error of law in the determination of Judge Sangha.

**Decision**

8. The determination of Judge Sangha contains no material errors of law and his determination must therefore stand.
9. The Respondent's appeal is dismissed.

**Anonymity**

10. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I see no reason to direct anonymity pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

M Robertson  
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT

In light of my decision, I have considered whether to make a fee award (Rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4) (a) of the Tribunals Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011). As the appeal has been dismissed, Judge Sangha's fee award is confirmed.

Signed

Dated

M Robertson  
Deputy Judge of the Upper Tribunal