



IAC-FH-CK-V1

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

Appeal Number: IA/15524/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th July 2015**

**Decision & Reasons Promulgated
On 27th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR TSEYEN-OIDOV BAATAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Berry, instructed by ASG Immigration Ltd
For the Respondent: Mr Norton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Mongolia born on 4th October 1983 and he appealed against a decision of the respondent dated 13th March 2014 refusing his application for leave to remain in the United Kingdom under Article 8 of the ECHR. The appeal was heard by First-tier Tribunal Judge M A Khan on 31st October 2014 and dismissed on 13th November 2014.

2. The background to this appeal is that the appellant entered the UK as a student on 18th October 2008 having previously worked at the GOLMT Bank in Mongolia and he proceeded to study at various colleges looking forward to starting the final undergraduate course on 22nd October 2012.
3. He underwent a very serious physical attack by a group of seven people on 19th September 2012 and on 20th September had surgery for a traumatic spine injury. He realised he had lost all movement and sensation in his limbs and he went through extensive inpatient rehabilitation treatment lasting six months. He was discharged from Stoke Mandeville Hospital on 22nd March 2013. He now experiences severe physical effects from the attack, has no sensation in his hands save for his right thumb and is unable to hold things properly. He suffers from neurogenic bowel dysfunction which is managed by daily assistance from a district nurse.
4. At the hearing before the First-tier Tribunal the appellant gave evidence as his mother and sister were in Mongolia but his mother had many health problems, both physical and mental and his sister is in full-time work as an accountant. They live in a one bedroom property and were experiencing financial difficulties.
5. The appellant gave evidence that he had been told by his medical team that he had made a 75% recovery and that anything more was unlikely. To date he had been paid £10,000 by way of a criminal injuries compensation interim payment and the main component was still outstanding.
6. Judge Khan dismissed the appellant's appeal and found at paragraphs 36 and 37:
 - “36. On the basis of current case law, there is no need to consider Article 8 of the ECHR outside the Immigration Rules unless there are cogent reasons for consideration that there are compelling circumstances which would justify, exceptionally, allowing the application under Article 8 on the basis of decision produced a result that was unjustifiably harsh. The line of cases begins with **R (Nagre) v Secretary of SSHD [2013] EWHC 720 (Admin)**, endorsed by the Court of Appeal in **MF (Nigeria) v SSHD [2013] EWCA Civ 1192, Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)**.
 37. This line of authorities has held that the Immigration Rules are intended to be a complete code including for consideration of Article 8 family and private life rights. More recently, the case of **Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC)**, it was held that the new Rules are a complete code for Article 8 of the ECHR where a consideration of exceptional circumstances and other factors are required within the Rules. Once having considered the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside the Rules, is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules. I find that in this case the appellant has not provided any evidence of any compelling circumstances for the matter to be considered outside the Rules.”
7. It is incorrect to state that the Immigration Rules are intended to be a complete code for the consideration of Article 8 family and private life rights albeit that they might be a reflection of some of the Article 8 considerations. It is accepted that they are a

complete code in respect of the deportation provisions but as stated in Singh V SSHD and Khalid v SSHD [2015] EWCA Civ, paragraph 64, the test is whether all the relevant circumstances had been taken into account.

8. It is correct to state that as at the date of the decision by the respondent the Immigration Rule relevant was whether the appellant had “no ties” (including social, cultural or family) but this was deleted from the Immigration Rules on 28th July 2014 and in its place the test was following that date whether “there would be very significant obstacles to the applicant’s integration into the country to which he would have to go if required to leave the UK”.
9. As Mr Berry pointed out, this was not made clear in the determination and although I take heed of Mr Norton’s submission that the judge between paragraphs 30 and 32 some proportionality considerations were made, I am not satisfied that the judge addressed all the relevant evidence to make a full assessment of Article 8 outside the Rules. Judge Nicholson on granting permission identified that the prospects may not be strong but it is notable that Judge Khan referred to the appellant making an application for entry clearance as a spouse which was clearly not the case and begs the question as to whether sufficient care has been given to consideration of this appeal. Indeed I note that the reasons for refusal letter by the respondent herself confirms that consideration had been given to whether the circumstances constituted exceptional circumstances outside the Rules.
10. In particular it was stated that although the condition was not life-threatening, the psychiatric consultant Dr Turner MD FRCP on 1st September 2014 referred to the very poor psychiatric state of the appellant and his suicidal ideation. At paragraph 32 that Judge Khan stated that the appellant had his mother and his sister. The evidence recorded, however, was that the sister was in full-time work as an accountant and the mother had mental and physical health problems following the death of the father from cancer. These are relevant considerations and do not appear to have been addressed fully.
11. The appellant experienced a very serious attack whilst he was lawfully in the United Kingdom and continues to have medical assistance the standard of which he could not access in Mongolia and this *may* be a factor to consider in relation to proportionality, Akhalu (health claim: ECHR Article 8) [2013] UKUT 00400 (IAC).
12. In the circumstances I consider it was incumbent upon the judge to make a careful and full evaluation of all the relevant considerations in this matter including the fact that the appellant is still pursuing his claim for criminal injuries compensation whilst in the UK.
13. I therefore consider that the matter should be remitted to the First-tier Tribunal bearing in mind the nature and extent of the findings to be made.

Notice of Decision

The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Rimington