



IAC-FH-CK-V1

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

Appeal Number: IA/39361/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 17<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

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

Appellant

**and**

**MR MICHAEL JUAN JR DAVIS  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Home Office Presenting Officer  
For the Respondent: Mr J Khalid of Kings Court Chambers

**DECISION AND REASONS**

1. The application for permission to appeal was made by the Secretary of State but nonetheless I shall refer to the parties as they were described before the First-tier Tribunal, that is Mr Davis as the appellant and the Secretary of State as the respondent.
2. The appellant is a citizen of St. Kitts born on 2<sup>nd</sup> July 1987 and he made an application on 16<sup>th</sup> October 2012 for leave to remain in the United Kingdom on the basis of his private life. His application was considered in relation to paragraph 276ADE. A One-Stop Warning Notice had been

served and the appellant responded with a notice of appeal citing both his family and private life. Indeed in a letter dated 1<sup>st</sup> October 2012, which accompanied his application, it was submitted that the appellant had clearly established a private and family life in the UK.

3. First-tier Tribunal Judge Adio heard the appeal on 10<sup>th</sup> September 2014, dismissed the appeal under the Immigration Rules but allowed the appeal in a decision promulgated on 25<sup>th</sup> September 2014.

### **Application for Permission to Appeal**

4. An application for permission to appeal by the Secretary of State asserted that there had been a material misdirection of law and particularly with reference to Section 117 of the Nationality, Immigration and Asylum Act. The judge concluded that the public interest in the case was 'limited' and that the appellant's family circumstances outweighed it.
5. It was submitted that the judge had failed to take into account and lawfully engage with the evidence available in the appeal. At [19] of his decision the judge found that the appellant had 'no meaningful ties' and no means of supporting himself but this conclusion ignored the evidence that the appellant had uncles and friends in St. Kitts who could offer him interim support whilst he established himself. Whilst he may not have had much in the way of interaction with family members and friends it remained open to him to strengthen those relationships upon his return and to seek their aid.
6. Furthermore the appellant would be unable to gain the precise employment he currently undertook, that is in McDonald's and KFC but the Secretary of State submitted that the skills he had obtained during this employment could be utilised in other comparable restaurants in St Kitts.
7. Furthermore the judge concluded that the appellant's private life would be adversely impacted and this was a significant aspect of the instant appeal. The Secretary of State submitted that the judge had failed to disclose the substance of this private life and irrespectively only limited weight should be afforded to it.
8. The appellant arrived in the UK as a student and sought an extension of stay under the Tier 1 provisions as a post-study worker and then made the present application on Article 8 grounds on the basis of a private life. The Secretary of State submitted that at all times the appellant had been aware of the precariousness of his stay in the UK and it was fundamentally temporary owing to the fact that he had been aware of and complied with the expiration dates attached to his leave.
9. The appellant could have no legitimate expectation that any private life accrued could be continued in the UK and nor could his family members. The appellant could maintain contact with his UK family from St. Kitts through modern communicational methods/visits.

10. Further the judge was misdirected in asserting that the public interest in the appeal was limited in nature. There was a clear public interest in maintaining a firm and coherent system of immigration control.
11. Permission to appeal was initially refused by Judge Pooler, who stated that the grounds overlooked the fact that the appellant enjoyed family life in the UK and had not lived an independent life.
12. Upper Tribunal Judge Blum, however, granted permission to appeal on the basis that when assessing proportionality of the decision the judge took account of the fact that the appellant had no meaningful family ties and no means of supporting himself in St. Kitts but given that the respondent accepted in his evidence that he had a few close aunts and uncles and had obtained a bachelors degree in business administration and had no medical conditions, in the light of the fact that he was 27 years old at the date of the decision it was arguable that the judge failed to take account of these relevant considerations in his overall proportionality assessment.

## **The Hearing**

13. At the hearing Mr Melvin submitted that the judge had failed to take into account relevant factors in relation to the private life regarding return to St. Kitts. The appellant had family members in St. Kitts and their support was not taken into account. He would be able to use his skills to re-establish himself in St. Kitts. The judge had failed to take into account the fact that he was a healthy adult of 27 years old. He had no legitimate expectation of further leave in relation to private life. There was a reference to the delay factor which was not relevant.
14. Further there was a suggestion that the public interest was limited, which it was not. There was little in way of private life submissions or compelling circumstances to outweigh immigration control. Mr Melvin cited Singh
15. Mr Davis was not emotionally or financially attached to his parents and they were important areas which lacked finding. The decision reached the level of perversity and irrationality.
16. Mr Khalid submitted that both parties had agreed before the First-tier Tribunal that Article 8 issues were outside the Rules and the judge considered proportionality assessment in relation to both private and family life. The judge was aware that the Secretary of State's submission was the maintenance of immigration control which was in the public interest.
17. In relation to delay the judge had not mentioned this. At the date of the application the appellant was 25 years and 3 months and the judge had identified the compassionate circumstances at paragraph 14. In particular he identified that the appellant had always been a part of the family unit. There was nothing in the paragraphs of 24 to 26 of **Singh & Anor [2015]**

**EWCA Civ 630** which contradicted **Ghising** (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC).

18. This was a single young man living with his parents and he had always lived with them apart from one year when he lived with his sister.
19. Overall the judge found that the removal was disproportionate.
20. Mr Melvin submitted that the dependency of a young adult finished at the age of 21 or when they finished education although I find that there was no authority submitted for that proposition. Mr Melvin submitted that **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31** was still good law.

### **Conclusions**

21. Much of the criticism of and challenge to the judge's decision was in relation to the appellant's private life and the failure to take into account evidence of the appellant's ties and resources in St Kitts. It was the contention that the appellant had relatives in St Kitts, had the prospect of employment and in the meantime could turn to the relatives for support whilst being settled.
22. As indicated above the appellant made his application on the basis of both his family *as well as* his private life in the United Kingdom. In relation to *private life* under Paragraph 276ADE the judge noted the refusal of the respondent and indeed refused the matter himself under this Immigration Rule. (He also gave reasons for considering the matter outside the Immigration Rules). He did however find that the appellant had established family life with his parents in the United Kingdom.
23. The judge applied, with respect to family life, **Ghising** (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC) which explores the concepts in relation to Article 8 and set out the principles in relation to family life and adult children. This confirms, following **Kugathas**, that in the context of immigration control there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8 and it all depended on facts and that "a young adult living with his parents or siblings will normally have family life to be respected under Article 8". Clearly the judge was well aware that the appellant was at the date of the hearing 27 years old and was well-qualified because this was recorded in the decision and he specifically referred to the qualifications by adopting Ms Revill's (the appellant's representative at the First-tier Tribunal) submissions on compassionate grounds and also noted the degree at paragraph 17 of his findings.
24. It was clear that there was no factual presumption for the purposes of Article 8 and the judge had based his conclusions on relevant considerations and looked at the personal circumstances. He noted that the appellant had a degree at paragraph 17. Although he identified that

he might have an aunt or uncle in St. Kitts there was no suggestion that they were physically or emotionally close and hence the reference to a lack of 'meaningful ties'. He had not skimmed the surface but had gone further and considered the interests of his family in the UK. His father was a diabetic.

25. In **Kugathas**, at [14], Sedley LJ cited with approval the Commission's observation in **S v United Kingdom** [1984} 40 DR 196:

"Generally the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults, a mother and her 33 year old son in the present case, would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties."

HJ Sedley recorded in **Kugathas** that

"support" in the personal sense, and if one adds, echoing the Strasbourg jurisprudence, "real" or "committed" or "effective" to the word "support", then it represents in my view the irreducible minimum of what family life implies."...

'Such factors include identifying who are the near relatives of the appellant, the nature of the links between them and the appellant, the age of the appellant, where and with whom he has resided in the past, and the forms of contact he has maintained with the other members of the family with whom he claims to have a family life'.

26. Mr Melvin submitted **Singh & Anor [2015] EWCA Civ 630** and made note of paragraphs 24 and 25 of that decision.

"24. I do not think that the judgments to which I have referred lead to any difficulty in determining the correct approach to Article 8 in cases involving adult children. In the case of adults, in the context of immigration control, there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. I point out that the approach of the European Commission for Human Rights cited approvingly in Kugathas did not include any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8.

25. However, the debate as to the whether an applicant has or has not a family life for the purposes of Article 8 is liable to be arid and academic. In the present case, in agreement with Sullivan LJ's comment when refusing permission to appeal, the issue is indeed academic, and clearly so. As the European Court of Human Rights pointed out in AA, in a judgment which I have found most helpful, the

factors to be examined in order to assess proportionality are the same regardless of whether family or private life is engaged. The question for the Secretary of State, the Tribunal and the Court is whether those factors lead to the conclusion that it would be disproportionate to remove the applicant from the United Kingdom. I reject Mr Malik's submission that the Upper Tribunal Judge's assessment of proportionality was flawed because she, on his case wrongly, based it on the Appellants' private life rather than their family and private life. In my judgment, she took all relevant factors into account, and her conclusion on proportionality is not open to challenge. Indeed, I would go further. In my judgment, no reasonable Tribunal, on the facts found, could properly have come to a different conclusion."

27. The above lends support to the judge's approach. At [14] the judge accepted the submissions made by Ms Revill as to the compelling circumstances argued and accepted that the appellant did not live an independent life here but that he lived as part of a family unit and that a family life did not end at the age of 18. The judge accepted that there was strong emotional dependence between the appellant and his parents and found that the appellant's mother was a British citizen settled in employment and it was not reasonable for her to relocate and there would be a loss of day-to-day contact as it was now. The judge accepted that the appellant had always lived with his family.
28. In particular he noted at paragraph 14 that:

"The appellant has been part of his family, i.e. his parents, with the exception of one year when he lived with his sister in St. Kitts before coming to the UK. When he arrived in the UK he continued living with his father and mother. The fact that the appellant has always been part of his parents' family unit is a compelling circumstance in my judgment. I also accept there is a closeness of relationship between the family."
29. The judge went on to note at paragraph 15 that the appellant was still single had only lived away from his parents for one year and this was when he had lived with his elder sister. That said, for the rest of his life the appellant had always lived under the roof with his parents. At [16] the judge made a clear finding that the appellant had a family life with his parents

"... the appellant does not have an independent family unit and he enjoys close emotional ties with his parents and the fact that he is still part of the family unit means that there is no break in the family life."
30. The judge also found that the appellant's removal would have a significantly detrimental impact on his parents and cause the appellant himself great hardship. It is quite clear that the appellant would lose his employment in the UK and also recorded at [17] that his lack of progression at work because of his precarious immigration status had placed a cap on his earnings and made his family's accommodation situation very stressful. This indicated that the family was also dependent on the appellant's earnings. This aspect was another factor taken into account but the judge did not allow this appeal on the basis of private life.

31. There may have been only an oblique reference to the relatives of the appellant in St Kitts but the judge referred to the 'lack of *meaningful* family ties' in the context of the close family life that he had developed in the UK with his parents. As I have indicated above the judge cited the age, qualifications and employment experience of the appellant but nonetheless found continuing family life. I find that the judge was aware of the relevant factors and, on reading the decision as a whole, it is clear he did take these factors into account.
32. It is perhaps unfortunate that the judge states at the very close of his decision
- "I find that the appellant's family circumstances outweighs the limited public interests in his removal and that the decision consequently breaches Article 8 of the Human Rights Convention"
33. This however is inelegant expression rather than a misapprehension or misdirection of the law. The judge was aware when applying Section 117B(1) of the Nationality, Immigration and Asylum Act 2002 that maintenance of effective immigration control was in the public interest. He cites Section 117B at paragraph [17] and [18] of the decision. He does not indicate that he finds it 'limited' at this stage and not until the close of his decision does he '*find that the appellant's family circumstance outweighs the limited public interest*'. I accept the submission made by Mr Khalid that in fact the public interest was limited as a *result* of the factors considered by the judge in the final analysis and that it was limited as a *result* of those factors rather than being limited with factors be weighed against the public interest. The judge accorded the public interest the due weight. He took into account the immigration rules and I accept that the use of the word 'limited' in this context did not denote a presumption that the public interest was limited at the outset, more that it was outweighed by other relevant factors.
34. Finally on this point, the judge stated that he accepted the submission of Ms Revill, who stated "limited weight should be placed on the public interest as it was outweighed by the right to live with his family members which was a breach of Article 8". This would suggest that the conclusion of the judge, and his use of words, derived from the submissions of Ms Revill which were recorded at [12].
35. Section 117B of the Nationality Immigration and Asylum Act 2002 reads as follows:
- '117B Article 8: public interest considerations applicable in all cases
- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to—

- (a) a private life, or
- (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.'

36. Section 117B does not insist that little weight should be given to a family life
37. Section 117B(5) states that little weight should be given to private life established by a person at a time when the person's immigration status is precarious. The judge noted that the appellant had continued his family life and private life and it was not a case of re-establishing it, as it had continued to develop in the UK. The appellant's private life with his parents was established at a time when his status was not precarious; and his lack of legitimate expectation in relation to his private life are factors which are given statutory force as regarding the weight to be attached to private life but not family life.
38. The judge was well aware of the age and qualifications and employment situation of the appellant and took evidence that the appellant concluded he would not get a job in St Kitts in the establishments in which he has been working. There was no evidence produced regarding employment or comparable restaurants in St Kitts. It was open to the judge to find that the appellant would have no means to support himself. There was no cross examination recorded regarding the support that could be offered from his relatives in St Kitts and this appears to have been now raised as a point of disagreement with the decision. The judge found correctly at [18] that there was "no presumption as to the weight to be attached to appellant's family life with his parents and brother under Section 117 of the Nationality, Immigration and Asylum Act 2002". Indeed the judge factored in that there would be a significantly detrimental effect on the parents and his decision was concentrated on the strength of family life in the United Kingdom rather than private life.



39. I find that overall there are cogent reasons given for the judge's findings that the appellant enjoyed family life here and that, in these particular circumstances, this outweighed the position of the Secretary of State.

**Notice of Decision**

I find that there is no material error of law in First-tier Tribunal Judge Adio's decision and the decision shall stand.

No anonymity direction is made.

Signed

Date 4<sup>th</sup> December 2015

Deputy Upper Tribunal Judge Rimington