



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

Appeal number: IA/48776/2013

THE IMMIGRATION ACTS

**Heard at Field House
On March 18, 2015**

**Decision & Reasons Promulgated
On March 20, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR EDISON DELA CRUZ OVEJERA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Beach, Counsel, instructed by Selvarajah & Co

For the Respondent: Mr Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of the Philippines. The appellant first entered the United Kingdom as a student on October 18, 2008 with leave to remain until December 31, 2009. He applied for further leave to remain and this was granted until September 30, 2013 and on September 26, 2013 he made a further application to vary his leave to remain but this was refused by the respondent on November 7, 2013 and at the same time a decision was taken to remove him under section 47 of the Immigration, Asylum and Nationality Act 2006. His application was refused because the respondent was not satisfied he met the requirements of paragraph 276ADE or

Appendix FM and there were no exceptional circumstances that warranted consideration outside of the Rules.

2. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on November 7, 2013 arguing the respondent had erred in law in finding he did not qualify as a carer and should have allowed his appeal under article 8 ECHR.
3. The matter came before Judge of the First-tier Tribunal Hussain (hereinafter referred to as the "FtTJ") on September 5, 2014 and in a decision promulgated on September 24, 2014 he refused the appeal finding the decision was in accordance with the law (in relation to the carer issue) and there was no breach of family/private life because there was no breach of article 8 ECHR.
4. The appellant lodged grounds of appeal on October 6, 2014 and on December 10, 2014 Judge of the First-tier Tribunal White gave permission to appeal finding there were arguable grounds that the FtTJ had erred for the reasons raised in the grounds of appeal. The matter came before me on January 30, 2015 and at that hearing I found:
 - a. There was no error of law in respect of the Immigration Rules.
 - b. The FtTJ correctly found the respondent was entitled to refuse to apply the discretionary policy on carers.
 - c. The FtTJ wrongly found there was no family life between the appellant and his cousin (referred to as an aunt in the papers) and consequently erred by not considering the appellant's family life claim under article 8 ECHR.
 - d. The article 8 family life claim would have to be reconsidered.
5. I admitted into evidence an updated statement from the appellant dated January 19, 2015 and directed that any additional evidence should be served within a timetable I provided.
6. The matter came back before me as a resumed hearing on the date set out above. Medical notes and a consultant's report had been served as additional evidence and I admitted the same into evidence.
7. The appellant gave brief oral evidence in which he adopted his recent statement and confirmed that he was related to Ms Mariano because his grandmother and her mother were sisters. He confirmed that the other cousin, Ms Ovejera, was seventy years old and had back and knee problems and was unable to care for his other cousin. The ladies were related to each other. Under cross-examination he stated that there had been no contact from social services since 2013 although they had provided some practical equipment such as chairs and a commode. He agreed that the GP had informed her that she did not need to see a consultant. He concluded his evidence by confirming that he was the only

person who could provide the level of care necessary and that neither he nor his cousin claimed any form of benefits and his cousin's only income was her pension.

SUBMISSIONS

8. Mr Tarlow relied on the refusal letter and submitted there was family life and the issue for me to consider was whether removing the appellant was proportionate. He accepted that the appellant provided daily care for his cousin and he also accepted the cousin needed medical and social care. However, he had come as a student with no expectation of extending his stay and as a British citizen the cousin would be entitled to care within the community and assistance from appropriate bodies if there was no one to look after her. Both may prefer the person providing this care to be the appellant but the Tribunal should not overlook the fact there would be people to provide the necessary care and her own GP had not found it necessary to recommend her to see a consultant about her condition. He said removal was not disproportionate as the appellant failed to meet the terms of the policy or the Immigration Rules.
9. Ms Beach adopted her skeleton argument that she handed to me on the morning of the hearing. She reminded me there was no specific Rule that this appellant could benefit from and the Tribunal had previously ruled that he did not come within the respondent's carer's policy for the reasons set out in my previous decision. She invited me to consider the consultant's report and in particular paragraphs [10]-[11] and [18]-[19]. She submitted that if the appellant were removed then the cousin would suffer as she would lose that personal contact and social services would then have to provide, at a cost, the level of care necessary. She submitted there was no public interest in removal and his appeal should be allowed under article 8 ECHR.
10. I reserved my decision.

ASSESSMENT OF CLAIM

11. The appellant is 28 years of age and came to the United Kingdom to study. Whilst studying he stayed at his cousin's address and during the last three years he has had to care for her as there was no other family that could provide the level of care necessary.
12. The appellant made an application for leave to remain on September 26, 2013 and this application was not to extend his stay as a student but to care for his cousin. The FtTJ refused this application because the appellant failed to satisfy the requirements of the respondent's policy and I upheld that finding at an earlier hearing.
13. Both representatives agree that this appeal should be properly considered under article 8 ECHR and it is common ground that the issue is whether

removal is proportionate. The other questions set out in Razgar [2004] UKHL 00027 were answered in the affirmative.

14. I accept the appellant does look after his cousin who according to the recent consultant's report has severe mobility issues and requires 24 hour care. This report is undermined to the extent that the cousin's own GP has ruled out sending her to see a consultant at this time. The appellant himself has stated in paragraph [6] of his recent witness statement that social services are not providing any current assistance because he is present and looking after his cousin. I also accept that if the appellant was not present then his cousin would not receive the same attention she currently receives.
15. I have noted there is limited evidence from the other occupant of the house. She has not provided a statement and medical evidence is limited to appointment cards.
16. I have had regard to Section 117B of the 2002 Act so far as it is a relevant to a family life claim. The claim presented is on a family life basis as against private life and section 117B has less application in those circumstances.
17. However, Mr Tarlow's submission that maintenance of effective immigration control is in the public interest is something that I must take into account and I also have to consider how he would be able to maintain himself if he is unable to work. Section 117B(3) makes clear that it is in the public interest that persons who seek to remain in the United Kingdom are financially independent and I question how he will be if he is unable to work due to him providing 24 hour care to his cousin. The evidence before me is that his cousin only receives a pension so this is a factor I should have regard to. On the other hand I have had regard to the fact the appellant speaks English and would be less of a burden on taxpayers and better able to integrate into society.
18. This is not a case where there are no facilities or support available. If the appellant was not living here then the cousin would receive the appropriate care and assistance from the local authority and social services. She is not receiving any disablement payments and her own doctor has not said she needs to see a consultant at this time although this is probably due to the fact she saw one in 2013 and he ruled surgery out because of her obesity and the risks surgery would bring to her. It therefore follows that unless the patient lost weight surgery would never be recommended by any doctor or consultant.
19. I have considered all of the evidence and whilst I recognise the good the appellant is doing I remind myself that the respondent has a policy in place for situations such as this. The appellant did not satisfy the requirements of the policy and that is not something I can overlook when considering his application outside of the Rules. Article 8 is not meant to be a short cut or a quick fix. Whilst clearly there are positive reasons for

the appellant being allowed to remain there are a number of factors that counterbalance that argument. These include:

- a. Failure to meet the requirements of the respondent carer's policy.
 - b. The availability of care within the community and hospital services.
 - c. The appellant would have no source of income if he does what he claims he has to do and would therefore not be financially independent.
20. I therefore find that refusing entry would not breach this appellant's article 8 rights. If he feels he is now able to meet the respondent's policy on carers then that is the path he should be following.

DECISION

21. There was a material error in the way the FtTJ approached article 8 ECHR. I have remade that decision and I dismiss the appeal on article 8 grounds.
22. I have previously found the FtTJ did not err in his consideration of the how the respondent applied her carer's policy.
23. The First-tier Tribunal did not make an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

Signed:

Dated: **March 19, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

No fee award is made.

Signed:

Dated: **March 19, 2015**

Deputy Upper Tribunal Judge Alis