



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

Appeal Number: VA/02263/2015

THE IMMIGRATION ACTS

Heard at Field House

On 7 April 2017

**Decision &
Promulgated
On 4 May 2017**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

**MR PERRY SARKODIE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, USA

Respondent

Representation:

For the Appellant: Mr D Nelson-Iye, Legal Representative
For the Respondent: Mr P Armstrong, HOPO

DECISION AND REASONS

1. The Entry Clearance Officer has been granted permission to appeal the decision of First-tier Tribunal Judge Abebrese allowing the appeal of the appellant against refusal to grant him entry clearance to the UK for a period of fourteen days.

2. The immigration history of the appellant indicates that he was refused entry clearance into the United Kingdom in 2010 on the basis that he did not hold an electronic travel ticket. Furthermore, the record of the respondent shows that he was refused twice at port, this being in 2010 and also once in New York on 16 January 2013.
3. The Entry Clearance Officer refused entry clearance to the appellant as a visitor because he was not satisfied that the appellant was a genuine visitor who intended to leave at the end of his visit to his sister in the UK.
4. The appellant was granted a restricted right of appeal as contained in Section 84(1)(b) and (c) of the 2002 Nationality, Immigration and Asylum Act. The restricted appeal rights for visitors coming to visit family members in the UK applied to any application made on or after 25 June 2013. As this instant application was made on 12 February 2015, it was subject to the appeal restriction. The restriction meant that the appellant's only argument was whether the refusal to grant him a visit visa violated his Article 8 rights.
5. It was clear from the decision that the judge failed to consider the appellant's appeal in accordance with the restriction contained in Section 84(1)(b) and (c) of the 2002 Act.
6. The judge considered the appeal under paragraph 41 of the Immigration Rules. By doing so, I found that the judge erred in law.
7. Mr Nelson-Iye conceded that the judge erred in law for this reason. Accordingly, I found that the judge's decision could not stand. I heard submissions from the parties in order to remake the decision.
8. The facts of this case are not in dispute. The appellant is a self-employed cab driver earning 1,830 in the United States of America. He is single and has three dependent children. He provided a copy of his birth certificate, the birth certificates of his children, a letter from Yellow Cab Company dated 10 March 2015, a variety of bills, and a Halifax Bank statement.
9. His sponsor and sister, Ms Jackie Boachie, is a British national of Ghanaian descent born on 12 December 1960. She is employed as a chef in South Croydon and has been in this employment since 2007. Her current income is 22,000 per annum.
10. She said her brother, the appellant, is a national of the United States of America and has been settled in that country for almost two decades. He supports his two children born in 2001 and 2004 respectively.
11. She resides in a two bedroomed property which is rented to her. She resides with her son.

12. In respect of Article 8, Mr Nelson-Iye relied on the witness statement provided by the sponsor. At paragraph 6 the sponsor said she has been in constant communication with her family ever since her arrival and stay in the UK. She has made frequent visits to see her family back home in Ghana, and, also to the USA severally to see her brother and his family.
13. At paragraph 7 she said it was during such family visits with her son to the USA in 2007 that her brother expressed an interest in taking a holiday and visiting them in the UK. She and her son were ecstatic about this news and looked forward to his visit since it was to be his first ever visit to the UK.
14. Mr Nelson-Iye relied on the legal authorities which had been submitted by Mr Armstrong. He relied in particular on **Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC)** in his attempt to persuade me that family life can exist between adult siblings.
15. Mr Nelson-Iye relied on paragraph 54 of **Ghising** which relied on what Sedley LJ said in **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31**. Sedley LJ accepted the submission that “dependency” was not limited to economic dependency.

“But if dependency is read down as meaning ‘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 his view the irreducible minimum of what family life implies”.
16. Mr Nelson-Iye relied also on paragraph 58 of **Ghising** which cited the decision of **SSHD v HK (Turkey) [2010] EWCA Civ 583** in which Sir Scott Baker considered the judgment in **Kugathas** and held that “undoubtedly the applicant had family life while he was growing up and the Court of Appeal would not regard it as suddenly cut off when he reached his majority”.
17. Mr Nelson-Iye submitted that the appellant and his sister were siblings of the same family unit until they each reached the age of majority and set up home on their own. He submitted that the **Kugathas** interpretation of family life has been said to be too rigid. Although the respondent and the applicant are both grown-ups, they have kept in touch with each other. At paragraph 73 of **Ghising** the Tribunal agreed with the judge’s finding that the applicant had a private life in the UK which encompassed his relationship with his parents, sister and extended family, as well as his social life and studies. He submitted that the Upper Tribunal went on to find that the judge’s conclusion that the consequences of removal were not so grave as to engage Article 8 was applying too high a threshold of engagement for Article 8.
18. Mr Nelson-Iye submitted that there was a family life between the appellant and his sponsor. The sponsor has visited the appellant in the USA. The

appellant has made three attempts to visit the UK which have all been turned down. Private life exists because of the visits made by the sponsor to the appellant in the USA and the contact they normally have outside of these visits. Bearing in mind the judge's positive findings, Mr Nelson-Iye submitted that the interference of the private and family life established between the sponsor and the appellant would be disproportionately interfered with if the refusal decision is maintained.

19. Mr Armstrong submitted that Article 8 case law sets a very high threshold in the consideration of family and private life between adult siblings. He submitted that the sponsor and the appellant live in different countries. Maintaining the decision would not be an interference in their private and family life because whatever way they communicate with each other will continue as it currently exists.
20. Mr Armstrong relied on the respondent's grounds of appeal. At paragraph 4 the respondent relied on paragraph 8 of **MS (Article 8 - family life - dependency - proportionality) Uganda [2004] UKIAT 00064** wherein it was held:

*"It is accepted law that in circumstances where family life is put forward as existing between an adult child and his parents [...] there need to be further elements of dependency involving more than emotional family ties. This was reaffirmed in **Salad [2002] UKIAT 06698** relying on the early case of **Advic v United Kingdom**, a Strasbourg case decided in September 1995".*

21. Mr Armstrong submitted that there was no further evidence of dependency. The sponsor and the appellant live in separate countries. They keep in touch and the sponsor visits the appellant in the USA. Relying on paragraph 25 of **Kugathas** he submitted that there is no presumption of family life in this case. This is because **Kugathas** stated in paragraph 20 in relation to visits:

"Neither blood ties not the concern and affection that ordinarily go with them are, by themselves or together in my judgment enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8".

22. Mr Armstrong relied on paragraph 6 of the respondent's grounds which relied on **ZB (Pakistan) v SSHD [2009] EWCA Civ 834** which stated that whilst there can be family life between adults, the issue will be how dependent the older relative is on the younger ones, and whether this dependency represents more than "normal emotional ties". Paragraph 7 of the grounds relied on **Ghising** which stated that "adults will need to be

valuing and depending on each other for mutual support and affection”, with financial/emotional dependence, e.g. daily contact.

23. Mr Armstrong submitted that in this case none of these criteria appear to be met. They live in different countries and have different lives.

Findings

24. In the light of the case law cited in the Secretary of State’s grounds of appeal and also relied on by Mr. Nelson-Iye, I find that there is no family life between the appellant and the sponsor even applying the irreducible minimum of what family life implies. **Ghising** was a case that involved a relationship between a parent and an adult child. Hence the finding by Sir Scott Baker in **HK (Turkey)** that while the applicant had family life whilst he was growing up, he would not regard it as suddenly cut off when he reached his majority.
25. In the instant case, the appellant was born on 14 July 1964. He is 52 years old. The sponsor was born on 12 December 1960. She is 56 years old. I accept that they were family members of the same family unit but for many years now, they have not shared the same family unit. They have each formed their own family unit. The sponsor said in her witness statement that the appellant has been settled in the USA with his family for almost two decades now. Therefore, the irreducible minimum level of what family life implies, if dependency is read down as meaning “support” in the personal sense, “real” or “committed” or “effective”, adding those words to the word “support” does not apply in this case. There is indeed no financial dependency between the appellant and the sponsor. On the evidence and applying the relevant case law I find there is no family life between the appellant and the sponsor.
26. I go on to consider the private life element of Article 8. From the evidence the private life between the appellant and the sponsor in terms of visits seems to be one-sided. The sponsor and her son are the ones who have visited the appellant in the USA on several occasions. Because the appellant has on three occasions been refused entry clearance to the UK to visit the sponsor, he has maintained his private life with the sponsor in other ways. I am not persuaded that this state of affairs should be allowed to continue indefinitely in the guise that maintaining the status quo is not a disproportionate interference with the appellant’s private life with the sponsor. I find on the evidence and the findings made by the judge that the continued refusal of entry clearance to the appellant amounts to a disproportionate interference with the private life that he has with his sister, the sponsor.
27. The appellant’s appeal is allowed on Article 8 grounds.
28. No anonymity direction is made.

Signed

Date: 3 May 2017

Deputy Upper Tribunal Judge Eshun