



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/02050/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15th January 2018
Decision & Reasons given orally at
the hearing**

**Promulgated
On 8th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**MR ALI AKBAR ZILANI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: Ms A Childs, Counsel, instructed by D J Webb & Co
Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The only Appellant in this appeal is Mr Ali Akbar Zilani. His appeal was originally linked at the First-tier Tribunal with those of Mrs Sultana Begum, appeal number HU/02036/2015, and Mr Tanbir Hasnat, appeal number HU/02053/2015. Mrs Begum's and Mr Hasnat's appeals were allowed by the First-tier Tribunal. There was never an appeal against their decisions. Their appeals remain allowed, and indeed, I have been able to see that Mr Hasnat and Mrs Begum were granted entry clearance because they are here at the Tribunal hearing before me this morning. Therefore, as I say, the only appeal is that of Mr Zilani. The cause list which had the appeals of the Mr Hasnat and Mrs Begum for today's hearing is therefore incorrect.

2. Mr Zilani is a son of Mrs Begum. He was just over the age of 18 when he had applied for entry clearance. The judge, First-tier Tribunal Judge Talbot, considered his appeal along with the other two Appellants at a hearing on 23rd February 2017 and he dismissed Mr Zilani's appeal.

3. Permission to appeal was refused by the First-tier Tribunal but was granted by the Upper Tribunal and it was said when permission was granted that,

“The grounds seeking permission to appeal are essentially an assertion that the First-tier Tribunal decision is perverse in the light of the social worker's report and the acceptance by the First-tier Tribunal Judge of that report and that there is family life between the Appellant and his younger brother. A challenge based on perversity is a high threshold but it is just arguable in this case.”

4. The grounds seeking permission were detailed. In relation to the social worker's report it said at paragraph 9:

“The IJ at paragraph 13 has not criticised the report of Mr Ahmed; in fact, the IJ appears to have accepted the findings of the social worker's report. It is therefore unclear as to why the IJ has departed from the evidence of the social worker that the relationship could not be maintained through modern electronic means, albeit the finding has been made implicitly. Contrary to the decision of First-tier Tribunal Judge Frankish, it must be the case that the IJ has failed to take full account of the social worker's report. The IJ has failed to give adequate reasons for a finding on a material matter to the outcome or otherwise made an irrational finding that departed from the expert evidence. Alternatively, the IJ had made a mistake as to this fact, which has resulted in unfairness to the Appellant.”

5. In her written and oral submissions today, Ms Childs on behalf of the Appellant essentially points out two aspects. She says that it was paramount for the judge to consider the emotional bond and relationship between the two brothers and that the judge had not referred to the key parts of the social worker's report when making findings as to proportionality.

6. Mr Duffy in his brief but highly relevant submissions said that when permission to appeal was granted it was noted that it was on the basis of a perversity challenge. The First-tier Tribunal Judge had not rejected the social worker's report but the judge had explained at paragraph 24 of his decision as to why it would not be disproportionate for the decision to be made. The same paragraph also went on to say how they could care for the Appellant's brother in the United Kingdom. It was submitted that the First-tier Tribunal Judge was alive to the facts of the case. Ultimately this was a decision which the Appellant does not like. The decision was for the judge alone. Another judge, indeed, many other judges may have come to

a different decision but that does not mean that there is a material error of law.

7. In assessing the rival submissions it is necessary to refer to paragraph 24 of the judge's decision in a little more detail. The judge said:

"... It is also referred to in the social worker's report. I accept that the relationship between the brothers is closer than would generally be the case because of the disabilities of Tanbir and the involvement of Ali in supporting his brother including with regard to intimate physical matters such as dressing, feeding, washing and toileting. I accept that his role is particularly important in the physically more onerous matters such as lifting Tanbir. It is arguable that for these reasons the relationship between the two brothers constitutes Article 8 family life despite the fact that Ali is over 18 (and Tanbir was also over 18 by the date of decision). The issue is whether the Respondent's decision, insofar as it would result in the separation of the brothers, would lead to such unjustifiably harsh consequences as to render it disproportionate. I am not persuaded that the consequences for Ali could meet this test. He may be able to maintain the relationship with his brother and his mother in some form through electronic means and will no doubt be capable of adjusting to the new situation, as he gets on with his life in Bangladesh as a healthy young adult. The consequences for Tanbir may be more serious. However, in place of the company and support of his brother, he will be able to enjoy the relationship with and support from his father and extended family members in the UK. Taking into account all the evidence before me, I am not satisfied that there are sufficiently compelling or exceptional circumstances to meet an Article 8 claim outside the ambit of the Immigration Rules."

8. In my judgment, having accepted the social worker's report and having noted the extensive relationship between the brothers (which included not only the physical nature of the assistance that the Appellant provided to Tanbir but also the emotional bond that they had), it was incumbent upon the judge to explain how the extended family members or others here in the UK would have been able to assist with that emotional bond and that emotional relationship. The social worker's report explained that it was not possible to use modern electronic means to assist with that emotional bond because of Tanbir's disabilities.
9. In my judgment, there is therefore an error of law which is material. The judge accepted that there was family life. The judge accepted that there was the social worker's report saying what it did following a specific visit to the family in Bangladesh and thereby it was incumbent upon the judge to explain how it was that this relationship would continue between the two brothers from such a distance.
10. I turn to consider what the appropriate course might be now that I have found there to be an error of law, namely whether there should be a continuation hearing today or whether that should be on a different

occasion and the location of it of any such hearing. In my judgment, because of the relatively unusual circumstances of the Appellant's brother and mother having been granted entry clearance and because they are now here in the UK and because ultimately this is an Article 8 claim the Appellant should be given the opportunity to present any further evidence that he seeks to rely upon.

11. I have considered whether the appropriate course for that further hearing should be here at the Upper Tribunal or the First-tier Tribunal and, in my judgment, the appropriate venue is at the First-tier Tribunal. The First-tier Tribunal will give further directions as it considers but the only direction I make is that the matter is not to be heard by First-tier Tribunal Judge Talbot. The hearing will take place at Taylor House. The only issue will be the matters in respect of this Appellant. The findings of the Judge that he could continue in his private and family life from abroad are set aside.

Notice of Decision

The First-tier Tribunal's decision contained an error of law.
There shall be a re-hearing at the First-tier Tribunal.

Signed: A Mahmood

Date; 15 January 2018

Deputy Upper Tribunal Judge Mahmood