



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/23985/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23rd July 2018

Decision and Reasons Promulgated
On 30th July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

GOPAL RAI
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Puar (Counsel, instructed by N C Brothers & Co, Solicitors)
For the Respondent: Ms K Pal (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's appeal against the refusal of his application for entry clearance was heard by First-tier Tribunal Judge Hawden-Beale at Birmingham on the 8th of November 2017. The appeal was allowed in the decision promulgated on the 22nd of November 2017. The Judge found that there was family life between the Appellant and the Sponsor and that article 8 was engaged, the Judge went on to find that the exclusion of the Appellant was disproportionate and allowed the appeal.
2. The Secretary of State sought permission to appeal on the basis that the Judge was wrong to find that article 8(1) was engaged given the Appellant was a healthy adult who had lived apart from his family and that financial dependency was not enough. Alternatively it was also argued that the Judge erred in the proportionality assessment having focussed in the historic injustice rather than the reality of the Appellant's circumstances and the likelihood of his being dependent on the state in the UK. Permission was granted by Designated First-tier Tribunal Judge Peart on both grounds.

3. At the hearing before the Upper Tribunal both parties maintained their respective positions. The submissions are set out in the Record of Proceedings and are referred to where relevant below.
4. In finding that family life existed between the Appellant and the Sponsor the Judge addressed the issue in paragraphs 15 and 16. Relying on the case law set out in the decision, the cases of Ghishing [2012], Ghishing [2013] and Rai and others the Judge focussed on whether the Appellant had established an independent family life. Still living alone and financially supported by the Sponsor with no employment the Judge found that that was sufficient to engage article 8. As the Judge had recorded in Mr Puar's submissions the fact that the Appellant might be able to obtain work was not, from Rai, a relevant consideration. On the evidence that was presented and which the Judge accepted it was a finding open to her that article 8(1) was engaged and the decision is not vitiated by an error.
5. Turning to proportionality the considerations that apply in Ghurka cases there are different considerations which reflect the courts' approach to the historic injustice. These too were set out in the decision at paragraph 22 of the decision. Applying the principles set out the Judge went on to find that the decision to exclude the Appellant was disproportionate. Having found that but for the circumstances that applied the Appellant would have settled with his parents had that been available the Judge's findings were open to her and cannot be said to amount to an error of law.
6. For the reasons given I find that the decision of Judge Hawden-Beal does not contain an error of law and accordingly stands as the disposal of this appeal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing the Secretary of State's appeal I make no fee award.

Signed:



Deputy Judge of the Upper Tribunal (IAC)

Dated: 23rd July 2018