



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02115/2020**

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft Teams Decision & Reasons Promulgated
On 8 February 2022 On 18 March 2022**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MR AKASIRAJ SURESHRAJ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

Representation:

For the Appellant: Ms A Radford, Counsel instructed by Greater London Solicitors Limited

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Russell sent on 31 March 2021 dismissing the appellant's human rights appeal against the decision of the Entry Clearance Officer dated 9 January 2020 to refuse him entry to the United Kingdom. Permission to appeal was granted by First-tier Tribunal Judge Saffer on 14 May 2021.

2. This hearing was held remotely via video link and neither party objected to the manner of the hearing. Both parties participated by Microsoft Teams. I am satisfied that a face-to-face hearing could not be held because it was not practicable and that all of the issues could be determined fairly in a remote hearing. There were no IT problems during the hearing and neither party complained of unfairness.

Background

3. The appellant is a national of India born on 27 October 2000. On 17 October 2019 he applied for entry clearance to enter the United Kingdom as the child dependant of a parent who is applying for, or already has permission to be in the UK as a partner. The appellant applied for entry clearance at the same date as his mother. Her application was delayed because of her failure to pass the English language test. By the date of the application the appellant was 18 years old. The application was refused on 9 January 2020 on the basis that the appellant could not meet the requirements of EC-C.1.1 of the Immigration Rules because of his age and it was not considered that there were any exceptional circumstances which would render refusal of the application a breach of Article 8 ECHR because it would result in unjustifiably harsh consequences for the appellant or his family. The decision was maintained on review by the Entry Clearance Manager on 16 June 2020. The decision under appeal is the decision dated 9 January 2020 to refuse entry clearance.
4. The appellant's position is that he has lived with his mother throughout his entire life and is heavily reliant on her for emotional support because of his mental health problems. He is financially supported by his father, who has been resident in the United Kingdom for some time. The appellant and his mother form a close-knit interdependent family unit. There is real, effective or committed support between the appellant and his parents. Article 8(1) ECHR is engaged in respect of family life and it would be a disproportionate interference with that right to refuse the appellant entry because of the extent of his mental health problems, his reliance on his mother and the delay in her obtaining her English language test.

Decision of the First-tier Tribunal

5. The judge dismissed the appeal. The judge noted that the appellant could not meet the requirements of the Immigration Rules. He then turned to the issue of family life. The judge found that family life did not exist between the appellant and his parents because there was no real support, effective support or committed support to the appellant. The judge considered the evidence of the appellant's poor mental health and found that his conditions are at the "lower end" of the spectrum. The appellant is being treated with low doses of medication for anxiety and depression. The judge was not satisfied that the appellant had attempted suicide and found that the oral evidence contradicted the medical evidence in this respect. The judge took into consideration the fact that the mother had not put arrangements in place for her son to prepare for her absence and

found that there was limited evidence of the substance of the contact between the appellant and his mother. The judge found that the appellant has not established a family life with his parents, who are present and settled in the United Kingdom because there is no evidence of real, effective or committed support. In the alternative, the judge found that there are a range of options available to continue family life and that the decision is not an interference with their right to family life. In the alternative, the judge found that the decision is proportionate to the legitimate aim of maintaining immigration control.

Grounds of Appeal

6. The grounds of appeal are as follows:

- (1) In dismissing the appeal the First-tier Tribunal Judge materially erred in law:
 - (a) He overlooked a key letter from the appellant's doctor and a statement from the neighbour (a police officer) who took the appellant to hospital after a suicide attempt and consequently concluded that there was no evidence of his suicidal ideation or attempts, which contrasted to the evidence of the appellant's mother, father and brother.
 - (b) The judge's finding that the appellant's mental health problems are "at the lower end of the scale" is therefore based on errors of fact which amount to errors of law under E and R v SSHD [2004] EWCA Civ 49.
 - (c) The judge's conclusion that there was no "real, committed or effective support", between the appellant and his parents, despite him being wholly financially dependent on them and heavily emotionally dependent on his mother is unsustainable because it is outside the range of reasonable conclusions open to the Tribunal.

Rule 24 Response

7. The Secretary of State did not produce a Rule 24 response.

Documents

8. On the day of the hearing, I was provided with an electronic copy of the appellant's original bundle, the supplementary bundle and a further letter from the appellant's doctor. The respondent's bundle as well as the judge's decision and the grant of permission were all on the file.

Grant of Permission

9. Permission was granted on 14 May 2021 by First-tier Tribunal Judge Saffer on the basis that "it is arguable that the judge may have given inadequate consideration to the medical evidence. All grounds may be argued".

Submissions

10. Ms Radford's submissions focussed on the fact that the judge had failed to take into account an additional letter from the appellant's doctor dated 24 March 2021. The letter referred to the appellant attempting suicide and violently assaulting his brother on 28 December 2000 as well as the fact that the appellant is emotionally attached to his mother. She also pointed to the fact that the judge did not refer to the evidence of the neighbour, a police officer, who stated that he took the appellant to hospital after the suicide attempt. The judge has failed to refer to the evidence. The judge specifically commented on the absence of any mention of the suicide attempt by the doctor when making findings about the appellant's mental health. She submitted that this amounted to a mistake of fact because the judge was mistaken about what the evidence was. The judge's mistake was material to his findings at [22]. She also pointed to the fact that the respondent was not represented at the appeal and there was no suggestion in the hearing that the witnesses had not been truthful about what they reported. Ms Radford submitted that the evidence of the sponsor and the appellant's mother was unchallenged.
11. There was additional evidence in a small supplementary bundle which demonstrated that the appellant had been financially dependent on his father throughout his life and that he had lived with his mother his entire life until 2020 when she came to the United Kingdom. Following her departure, his relatives including his maternal grandfather looked after him but were unable to cope with his behaviour. There was evidence that the appellant's mother spoke to the appellant every day four or five times a day; that he would not listen to anyone else; that he was neglecting himself and that the appellant's brother was hospitalised after the appellant attacked him. There was no suggestion during the hearing that the witnesses were not telling the truth. It was irrational for the judge on the basis of this evidence to find that there was no evidence of real, committed or effective support.
12. Ms Isherwood defended the decision. Her submission is that there is no material error. She submitted that at the beginning of the decision, the judge referred to the appellant's bundle consisting of about 400 pages, which is consistent with the first bundle of about 371 pages and the supplementary bundle of ten pages. The judge is not required to refer to all of the evidence in the decision. The judge considered all of the documentary and oral evidence before him and referred to the skeleton argument. It cannot be said that the judge was not aware of the evidence.
13. She conceded that there was no direct mention of the GP letter dated 2021. Her main point was that even if the judge had referred to the further medical evidence it would have added little, since the medical evidence itself explained that the doctor had been "informed" that the appellant had attempted suicide and had been "informed" that he had been taken to hospital. This information was not within the doctor's own knowledge but had been relayed to him. The evidence would not have

made a difference to the outcome of the appeal, particularly in the light of the judge's findings that the mother had not made any preparation for what would happen to her son following her departure and that the appellant was already suffering poor mental health prior to his mother leaving India. The judge did not ignore the police report. The mother did not understand the concept of her child growing up independently. The judge was entitled to take into account that there was no explanation as to why a nurse was not engaged earlier.

14. Turning to the judge's conclusions on family life. Ms Isherwood submitted that the judge took into account that the appellant was supported by his father financially and that he had lived with his mother up to a point but had then been left with a nurse. The judge at [24] did not accept that the WhatsApp communication was via telephone calls and was entitled to find there was no evidence of the substance of the WhatsApp communication. The judge considered the evidence from the appellant's mother, father and brother and was entitled to find that the appellant's father had little affection or interest in him. The judge's findings in relation to family life are rational and open to him on the evidence.
15. Further, the judge has considered the issue in the alternative, finding that even if the judge was wrong, the family had a range of options as to where they could continue their family life and in any event, the decision was not disproportionate.
16. In response, Ms Radford pointed to the fact that the WhatsApp evidence is that the appellant's mother speaks to her son by WhatsApp four to five times a day and this level of contact on its own is evidence of emotional support. Crucially, the judge rejected the evidence of the family based on the "scant two pages" referring to pages 106 and 105 and overlooked two key pieces of evidence. The appellant was entitled to have his case decided on the evidence before the judge. She further pointed to the lack of any challenge to the appellant's witnesses' credibility. Had the judge looked at the evidence in the round, he may well have found that the appellant's mental health problems were more significant, which would have then fed into his assessment of the existence of family life and the proportionality of the decision. The errors are material.

Discussion and Analysis

Ground 1

17. Ms Isherwood for the respondent is correct in that at [4] the judge states:
"I have carefully considered the documentary evidence before me, the oral evidence of the appellant's father and mother in the UK and the submissions made by Counsel ...",

and at [5]:

“I have before me the respondent’s bundle, including the reasons for refusal. I also have before me an appellant’s bundle containing the skeleton argument of Ms Radford.”

18. I accept from these paragraphs that the judge has referred to the evidence in general. Nevertheless, (as is conceded by Ms Isherwood), the judge does not refer specifically to the ten-page supplementary bundle of evidence nor to the additional letter which was supplied from the appellant’s doctor. The judge at [8] sets out Ms Radford’s skeleton argument, which in turn refers back to the supplementary statements.
19. At [22] there is a brief reference to the appellant’s father’s statement “(para.8, WS, page S2 A/B)” and “the letter from his brother”. From this, I am satisfied that the judge must have at least had before him the supplementary ten-page bundle because the references “page S2 A/B” refer to the statement in the supplementary bundle and the letter from the appellant’s brother can only be found in the supplementary bundle.
20. However, I am satisfied that the judge failed to take into consideration the supplementary letter from the doctor which had been submitted by the appellant to the Tribunal in support of his appeal prior to the appeal hearing.
21. The letter is from the appellant’s doctor, Dr Tamijvelane and dated 24 March 2021, shortly prior to the appeal hearing. The same doctor had previously supplied a letter explaining that he had been treating the appellant for depression and anxiety since 2019. The letter said:

“With reference to your letter I am to inform you that Mr SRA, 20/M is still under my treatment and his condition is unstable. It was brought to my knowledge that he attempted suicide on 1 June 2020 and he was treated at the General Hospital Karaikal. Further it was informed to me that Mr SRA exhibited violent behaviour and assaulted his brother on 28 December 2020.

During these two incidences Mr SRA took treatment at the nearby health facility as I was not readily available for consultation.

Mr SRA seems to be emotionally attached with his mother and the separation of his mother causes aggravation of his depression.”
22. This is directly in contrast with the judge’s comment at [21] where it is said:

“There is no reference to this alleged suicide attempt in the letter of Dr Tamijvelane. Nor, indeed, is there any description in Dr Tamijvelane’s letter of any of the issues referred to in the appellant’s brother’s letter or the statements of the parents.”
23. From this I am satisfied that the judge is referring to the earlier letter by the same doctor and has not taken into consideration the evidence in the second letter. I reject Ms Isherwood’s evidence that this failure would not have had a material result on the outcome of the appeal because the doctor was relying on events that he has been told about (presumably by

the appellant's family). This is firstly because the judge also has omitted to have regard to the letter from the appellant's neighbour, a police officer who confirmed that he took the appellant to hospital after a suicide attempt on 1 June 2020. The neighbour was referred to in the statement of the grandfather as assisting the family and the neighbour confirms that he has done his best to help the family and provided his police identification.

24. The judge went on to "contrast" the earlier evidence of Dr Tamijvelane with the evidence of the appellant's mother, father and brother to the effect that his mental health had significantly deteriorated in 2020 to 2021 after his mother had left to join her husband in the United Kingdom. At [22] he concluded:

"To sum up, the evidence presented in this scant two pages (from nearly 400 in total) demonstrates the appellant suffered from poor mental health prior to his application for entry clearance. His conditions are at the lower end of the scale and are being treated with low doses of medicine for anxiety and depression. This is consistent with his father's statement (para.6, WS, page S2 A/B) but inconsistent with the oral evidence of his mother today. There is no evidence of suicide ideation or attempts, in contrast to the statement of his mother (para.9, WS, page 103 A/B) and father (para.8, WS, page S2 A/B) and the letter from his brother. These two pages of evidence fall woefully short of supporting the appellant's claim that his mental health has deteriorated to such an extent that he must be given clearance to enter the United Kingdom to be with his mother."

25. The judge has manifestly overlooked the second letter from the doctor and the evidence from Mr Kumar, the neighbour and police constable who said he had taken the appellant to hospital when he "took too many pills". There was on file a report to the police from Puducherry General Hospital entitled "Intimation of Accidents and Injuries to the Police" dated 1 June 2020 recording that the appellant "was brought in by A Ramesh Kumar and that A A/H/O ingestion of 2(no) paracetamol tablet at his residence at 1/6/2020 at 7.30pm". I agree with Ms Radford that had the judge looked at all of the evidence in its entirety including the evidence from the neighbour he may well have concluded that the appellant had been taken into hospital as a result of the suicide attempt.
26. Further, there was additional evidence from the appellant's brother that he had been attacked by the appellant and had himself been hospitalised as a result of this attack and this is also referred to by the doctor. Although the doctor has manifestly been informed of the attempted suicide and assault by the family, the doctor has also previously stated that he has been treating the appellant since 2019 and therefore must have knowledge of his health conditions. The doctor also comments that the appellant's "condition is unstable" and that "the separation of his mother causes aggravation of his depression".
27. The judge has failed to look at the medical evidence in the round and his conclusion that the appellant's mental health was at the lower end is therefore infected by error. I also take into account that there was no

suggestion at the hearing that the witnesses' evidence was untruthful and all four family witnesses including the appellant's mother, father, brother, grandfather and the neighbour gave evidence that the appellant has very significant health problems, leading him to neglect himself and become aggressive and difficult to manage, in addition to making a suicide attempt (however inept). There was no challenge to the evidence of these witnesses. I am satisfied that this is a material error of law which renders the decision unsafe.

28. I will not categorise this error as a mistake of fact but rather a failure to take into account material evidence which may have made a material difference to the judge's findings.

Ground 3

29. I am also satisfied that the judge's finding that there was no real, effective or committed support between the appellant's father and the appellant is unsustainable on the evidence before him and indeed on his own findings. At [19] the judge accepted that the appellant had lived with his mother from birth until February 2020 when he was 19 years old; that the appellant is not married and has not otherwise formed an independent family unit; that the appellant has been financially supported by his parents throughout his life and that there was evidence of continuing financial support to the appellant. The judge in addition accepted that he had some mental health problems. I agree with Ms Radford having accepted all of this evidence, the judge's finding that there is no real effective or committed support is unsustainable.
30. I also note that the judge's view is that WhatsApp is primarily an app for texting, so there is no basis for an assumption that the contact consists of calls. I find that this is a mischaracterisation of the evidence in which several of the witnesses clearly refer to the mother "speaking" to the appellant and the grandfather evidenced that his daughter "speaks" with the appellant on WhatsApp. It is also speculation that WhatsApp is primarily an app for texting as many people use WhatsApp for making telephone calls. In any event, as Ms Radford points out, the evidence of the mother was that she contacts her son four to five times a day and this, when set aside the evidence of the GP that the appellant's mother's support is crucial for his mental stability and recovery and that his health had deteriorated in her absence, is enough on any view to substantiate her claim that she has a strong emotional attachment to her son and provides him with support.
31. The fact that that the appellant's mother made no attempt to prepare for the appellant after she left India or put in place any care arrangements is an immaterial consideration in respect of the level of emotional support. The family also gave evidence in any event that the appellant had been left him with his grandfather and younger brother and that they appointed a nurse to look after the appellant. Again, I note that the witnesses'

evidence was not challenged. It was not submitted that the witnesses were untruthful.

32. I am satisfied that the judge has erred by finding that there was no real, effective or committed support by the appellant's parents to the appellant.
33. This error is material to the outcome of the appeal. Although the judge looked at the appeal in the alternative, the relationship between the appellant and his parents would have informed his findings on the quality of the family life and in turn on proportionality.
34. Since I have found that there are two material errors of law in this decision, I set aside the decision in its entirety.

Disposal

35. Since I have accepted that the judge's findings on the appellant's mental health and his risk of suicide are flawed and that his findings on family life are unsustainable there will need to be a new assessment of the facts in this appeal. I therefore find it appropriate to remit this appeal to be reheard de novo by the First-tier Tribunal. The view of both parties was that this would be an effective disposal of this appeal. I do not preserve any findings.

Notice of Decision

36. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
37. The decision of the First-tier Tribunal is set aside in its entirety with no findings preserved.
38. The decision is remitted to the First-tier Tribunal to be heard by a judge other than First-tier Tribunal Judge Russell.

No anonymity direction is made.

Signed R J Owens

Date 18 February 2022

Upper Tribunal Judge Owens