



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001311

First-tier Tribunal No: HU/08576/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

31st January 2024

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE JACKSON

Between

AMITANSH VIJAY KUMAR
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr V Kumar, Sponsor

For the Respondent: Mr Basra, Senior Home Office Presenting Officer

Heard at Field House on 14 December 2023

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Andrew promulgated on 8 December 2021, in which the Appellant's appeal against the decision to refuse his human rights claim dated 28 October 2020 was dismissed.
2. The Appellant is a national of India, born on 10 December 2002. His biological father was disowned by his grandfather in 2012 and thereafter was not actively involved in the Appellant's care, nor was his mother, and contact was lost with his sibling for some time. The Sponsor described the Appellant in his written statement as being raised by his grandparents with his help. The Sponsor returned to India on 4 March 2013 for this purpose. The Sponsor and his wife, Mr V Kumar and Mrs V Dhiman (married on 25 March 2015), adopted the Appellant on 17 October 2016 and spent time in India with the Appellant between 2013 and September 2018. The Sponsor returned to the United Kingdom, where he had

indefinite leave to remain in September 2018, and his wife and their daughter joined him later in 2019.

3. The Appellant made an initial application on 3 September 2020 for entry clearance to the United Kingdom to join his adoptive parents. That application was refused by the Respondent on 28 October 2020 on the basis that the Appellant did not meet the requirements in paragraph 314 (viii) and (ix) of the Immigration Rules, namely that there had been a genuine transfer of parental responsibility from the Appellant's biological parents to his adoptive parents and he had lost or broken ties with his family of origin. The refusal was not considered to breach Article 8 of the European Convention on Human Rights.
4. The Appellant made a second application for entry clearance on the same basis on 18 November 2020 (prior to the Appellant turning 18 years old), which was refused by the Respondent on 17 March 2021. Although this appeal is strictly against the first refusal, the second is helpful as it narrowed the reasons for refusal to only paragraph 314(ix) of the Immigration Rules, namely the requirement that the Appellant had lost or broken ties with his family of origin, in whose care he had been since birth. That remained the issue in the appeal under the Immigration Rules and of relevance to the human rights appeal.
5. Judge Andrew dismissed the appeal in a decision promulgated 8 December 2021 on all grounds. In relation to paragraph 314(ix) of the Immigration Rules, it was found that the Appellant had not broken ties with his family of origin because whilst it was accepted that the Appellant's biological parents were no longer living with the Appellant (but elsewhere in the same city), he has some contact with his sibling and continued to live in the family home with his grandparents in India. The Sponsor moved to the United Kingdom in 2007 and returned to India in 2013 after being granted indefinite leave to remain, and returned to the United Kingdom following his marriage. It was found that the one constant in all of the family changes was that the Appellant remained living with his grandparents and as such had not broken ties with them, who are his family of origin. This was found to be in accordance with the decision in MF (Immigration - adoption - genuine transfer of parental responsibility) Philippines [2004] UKAIT 94.
6. Judge Andrew went on to consider the best interests of the Appellant, even though he had attained the age of majority by the time of the appeal hearing. The medical evidence in relation to the Appellant was considered but did not indicate that there was any ongoing medical treatment for depression or otherwise and nothing to suggest any further treatment required would not be available in India. Nor was there anything to prevent the Appellant continuing to live with his grandparents in India in the future. The Appellant could make an application for entry clearance as a student if he wished to study at Coventry University as indicated. It was further found that the Appellant could maintain contact with his adoptive family in the United Kingdom as he had been. Overall, the refusal would not be a disproportionate interference with the Appellant's rights to respect for family life.

The appeal

7. The Appellant appeals on two grounds. First, that the First-tier Tribunal materially erred in law by not following the decision in VB and Entry Clearance Officer Ghana [2002] UKIAT 132 in which it was stated that a refusal solely based on paragraph 310(x) (now paragraph 314(ix)) would save in exceptional circumstances not be justified if the adoption is intended to be permanent and

the family of origin is not going to take back responsibility after entry clearance is granted. The Appellant had satisfied the requirement for a permanent transfer of responsibility to his adoptive parents. Secondly, that the First-tier Tribunal materially erred in law as to the assessment of Article 8 of the European Convention on Human Rights, specifically in relation to the Appellant's strong family life with his adoptive family, his mental health, his grandmother's poor health and the financial burden on the sponsor of travelling to and from India; with an overall failure to properly consider the best interests of the Appellant as a child.

8. Prior to the appeal hearing, the Appellant submitted a bundle of documents to the Upper Tribunal together with a covering email explaining what they were and why they were being submitted. The bundle included a chronology and skeleton argument; a number of duplicate documents from those that were before the First-tier Tribunal and a number of medical records, travel records, money transfer receipts, communication records, photos and documents relating to the Sponsor; almost all of which post-dated the decision of the First-tier Tribunal. As such, the majority of these documents were not relevant to the issue of whether the First-tier Tribunal erred in law (as there can be no error of law for failing to consider documents not before it) and would only be potentially relevant to update the evidence if an error of law was found and the appeal was to be re-determined.
9. The Sponsor attended the oral hearing on behalf of the Appellant (who joined by video link but did not directly participate in proceedings). He submitted that in accordance with VB, the Appellant's application should not have been refused on the sole ground that he had not broken family ties with his grandparents given that there was no doubt that there had been a genuine and lawful adoption as well as transfer of parental responsibility.
10. The Sponsor explained that since the Respondent's first refusal, there had been a change in living arrangements for the Appellant, who lived separately from his grandparents on a different floor in the house to them, initially due to covid in August 2021 and later there was a separate rental agreement. If neither the Sponsor nor his wife were in India, a caretaker was employed to look after the Appellant, a Mr Amit Kumar who provides the Appellant with food morning and evening. It was accepted that there was no evidence of these different arrangements before the First-tier Tribunal, although the Sponsor stated that some of the information was in his oral submissions. There had been a decision for the Appellant to live with his grandparents as separate arrangements did not work. The Sponsor explained that the decisions about living arrangements for the Appellant were made solely on the basis of his best interests, with evidence before the First-tier Tribunal that the Appellant's grandmother was not able to care for him due to her own poor health and that it would not be safe for the Appellant to live alone or in the Sponsor's other home in Jalapur, particularly due to his ongoing health needs and treatment. The Sponsor made a choice to return to the United Kingdom in 2018 for his family as there were better employment prospects here. The Sponsor now owns a home in the United Kingdom and his daughter is in education here, the family wishes to all be in the United Kingdom.
11. As to the Appellant's health, the Sponsor submitted that the Appellant had been under medical care for the last three years, for gynaecomastia (for which surgery was successfully completed) and for depression. There was medical evidence of this before the First-tier Tribunal including from Sobti Nursing Home on 28 June

2021 who recorded a prescription for anti-depressants for 10 days as well as other medical slips being provided. Given the First-tier Tribunal had stated not all evidence was legible, a consolidated medical report has since been obtained and is now available to the Upper Tribunal showing the treatment given over time. The Sponsor has been consulted by phone in relation to the Appellant's mental health. It has been recommended that the Sponsor should come to India to supervise the Appellant, but the Sponsor has stated that this is not possible due to the family situation in the United Kingdom and instead he is only able to visit India once or twice a year.

12. On behalf of the Respondent, Mr Basra relied on the rule 24 notice and submitted that whilst it was accepted that there had been a lawful adoption of the Appellant, he could not meet the requirement in paragraph 314(ix) of the Immigration Rules because he continued to live with his grandparents in India such that he had not broken ties with them. As such, there was no error of law by the First-tier Tribunal on that point. The Appellant's desire to live in the United Kingdom with his adoptive parents and study here was acknowledged, but as at the date of hearing he was an adult who was supported in India without any unmet needs there. The submissions at the hearing in relation to Article 8 were said to amount only to re-arguing that part of the claim rather than identifying any arguable error of law in the decision of the First-tier Tribunal on that point.

Findings and reasons

13. The requirements for a person seeking limited leave to enter or remain in the United Kingdom with a view to settlement as the adopted child are set out in paragraph 314 of the Immigration Rules as follows:
- (i) is seeking leave to enter to accompany or join or remain with a parent or parents in one of the following
 - (a) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is being or has been given limited leave to enter or remain in the United Kingdom with a view to settlement; or ...
 - (ii) is under the age of 18; and
 - (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
 - (iv) can, and will, be accommodated and maintained adequately without recourse to public funds in accommodation which the adoptive parent or parents own or occupy exclusively; and
 - (v) (a) was adopted in accordance with a decision taken by the competent administrative authority or court in his country of origin or the country in which he is resident, being a country whose adoption orders are recognised by the United Kingdom; or ...
 - (vi) was adopted at a time when:
 - (a) both adoptive parents were resident together abroad; or
 - (b) either or both adoptive parents were settled in the United Kingdom; and
 - (vii) has the same rights and obligations as any other child of the adoptive parent's or parents' family; and
 - (viii) was adopted due to the inability of the original parent(s) or current carer(s) to care for him and there has been a genuine transfer of parental responsibility to the adoptive parents; and
 - (ix) has lost or broken his ties with his family of origin; and

- (x) was adopted, but the adoption is not one of convenience arranged to facilitate his admission to the United Kingdom; and
- (xi) ...

14. The only part of paragraph 314 in dispute in this appeal is now paragraph (ix), on which permission was granted on the basis that it is arguable that there was an inconsistency between MF and VB as to its application. The First-tier Tribunal relied on the case of MF to the extent that the requirement in paragraph 314(ix) was not restricted to parents but included wider family members such as siblings, aunts and uncles and grandparents and on the facts in the present appeal, the ties with the Appellant's grandparents had not been broken as he was still living with them.
15. There is nothing to suggest the case of VB was put to the First-tier Tribunal and it was not considered expressly. In paragraph 13 of VB the expression 'ties with his family of origin' was given a meaning consistent with that in MF that it is not limited to natural parents but also wider family members such as those whom an individual was living with and by whom he or she was brought up and cared for before the adoption took place. In that respect, there is no inconsistency or tension between the decisions.
16. In relation to the wider meaning of 'ties with his family of origin', the Tribunal in VB went on to state as follows:

15. We are satisfied that 'ties with his family of origin' does not have the wide meaning the adjudicator has applied. It is intended to ensure that the adoption is not as it were temporary and that, once the child has obtained the entry to the United Kingdom which the adoption will achieve, the family of origin takes back responsibility. There must be a loss or break of the ties of responsibility. Those of affection may remain. Were it otherwise, a child of a single parent who was smitten with a terminal illness and was wholly unable to care for him or her could not join adoptive parents merely because he or she has retained affection for and visited the dying parent.

16. The existence of wider ties referred to by the adjudicator may throw doubt on the genuineness of the adoption and may justify in a particular case a finding that Paragraph 310(ix) or (xi) has not been satisfied. But if an Entry Clearance Officer is satisfied that 310(ix) and (xi) are satisfied he should only refuse under 310(x) if not satisfied that the adoption is intended to be permanent and that the family of origin is not going to take back responsibility when the entry is achieved. We doubt that a refusal based solely on 310(x) would save in exceptional circumstances be justified since the lack of permanency would usually result in a failure to meet the requirements of 310(xi). Whilst we have not considered Article 8 of the European Convention on Human Rights directly, we are sure that any other construction of 310(x) would not meet its requirements. This fortifies us in our construction of 310(x).

17. Whilst we agree with the construction in paragraph 15 to the extent that there must be a loss of ties or responsibility and that ties of affection may remain for the purposes of what is now paragraph 314(ix) of the Immigration Rules; we find that paragraph 16 of the decision goes too far as it essentially strips paragraph 314(ix) of any independent meaning. The issue of permanency is already covered by what is now paragraph 314(viii) requiring a genuine transfer of parental responsibility. There must be some substance attached to the

requirement in paragraph 314(ix) and the wording of what is required is clear and unambiguous.

18. In any event, on the facts of this appeal, the construction in paragraph 16 of VB would not assist the Appellant given the factual finding by the First-tier Tribunal that the Appellant had not broken ties with his grandparents with whom he lived, which was more than simply retaining ties of affection. They were the family members who cared for him from 2012 when his father left prior to the adoption in 2016 and who have continued to care for him within a joint household and particularly in the absence of his adoptive parents when in the United Kingdom.
19. At the oral hearing, the Sponsor indicated that there had been separate living arrangements for the Appellant since the Respondent's first refusal decision, however there was no such evidence before the First-tier Tribunal. To the contrary, all of the evidence pointed to the Appellant continuing to live with his grandparents as he had done for his whole life. This is supported by the details given on both application forms. In the first application, made on 3 September 2020, the Appellant gave an address (without distinction by floor) that he had lived at for 17 years and when asked for more details as to his living situation, he stated: *"I am living with my parents at 752 Sector 13, Kurukshetra. This is our family house and I live here since my birth. We were all living together and my dad has his ILR in UK since 2013 so he visit UK as required and my mother & sister were with me but they went to UK on 26-06-20 because of school meeting on 2 July 2020 of my sister Aarayna Vija in reception class, my grand parents are taking care of me for now. But its really hard for me to live without my mom, dad and sis."* When asked why the Appellant lived with his grandparents, he made a similar statement that it was because his parents were in the United Kingdom and he had been unable to join them in October 2019 initially due to exams in March 2020 and then due to covid.
20. In the second application made on 18 November 2020, the same accommodation details were given (again without distinction as to the floor) and when asked about the living situation, it was said that he was in his grand father's house which his father will inherit and the reason given was: *"Curerntly I am living with my grand parents and reason for this is I did not get a visa to be with my parents. Since my birth I always lived in this house. Til June this year we were all together and I was thinking that I will join my family in UK before my 18th birthday but after my visa refusal everything is ruined. It is very hard for me now to live with a thinking not to be with my family. Living here now is not my choice. It is just helplessness for me. I want to live with my parents and sis."*
21. The evidence with the Appellant's second application included an affidavit dated 20 November 2020 from his grandparents which confirms he was living with them while his adoptive family is in the United Kingdom, although sets out the practical difficulties of care for the Appellant.
22. The Appellant's grounds of appeal to the Upper Tribunal and a later email on 17 October 2023 attaching the new evidence; are both consistent with there having been a change in the Appellant's living arrangements after the First-tier Tribunal decision. For example, it was stated:

"7. Rent Agreement of Appellant - After FTT refusal Sponsor arranged a separate accommodation for appellant as grandparents were unable to take care of appellant due to Old age and medical issues of Grandma. An written statement from Grandparents was already submitted in FTT bundle about this concern

(Page 436-438). Till FTT hearing there was a hope that Appellant will get the entry clearance and live with adoptive family but when FTT appeal refused after that appellant grandad told sponsor to make some other arrangements for appellant due to the medical condition of grandmother and sponsor to fly to India specially to make accommodation arrangements for appellant."

23. Again, in the Appellant's skeleton argument, it was said that the FTT refusal has forced the Sponsor to break the emotional ties between the Appellant and his grandparent and to live separately from them with a caretaker.
24. In these circumstances, the evidence before the First-tier Tribunal was that the Appellant was living with his grandparents in a single household, as he had done since birth and continued to be cared for by them when his adoptive parents were in the United Kingdom. Whilst the reasons for doing so in the Appellant's best interests are entirely understandable, it was entirely lawful for the First-tier Tribunal to find that there the ties between the Appellant and his grandparents and not been broken. These ties were on any rational view, more than remaining ties of affection, but constituted ongoing care as had been the position over a number of years both before and after the adoption in 2016. In these circumstances, regardless of the wider comments in paragraph 16 of the decision in VB, the Appellant could not meet the requirement in paragraph 314(ix) of the Immigration Rules. There was no error of law in the First-tier Tribunal's assessment of the facts or application of paragraph 314(ix) of the Immigration Rules.
25. The remaining issue is whether the First-tier Tribunal erred in law in its assessment of Article of the European Convention on Human Rights. We do not find that it did. Careful consideration was given to the Appellant's circumstances in paragraphs 21 to 28 of the decision, which included reference to the limited medical evidence available in relation to the Appellant and relationships with his adoptive family and his grandparents. There was also reference to the absence of evidence of an ongoing medical treatment for the Appellant (that which was available before the First-tier Tribunal referred to depression and some prescriptions for anti-depressant medication for periods of 10 days) and an absence of evidence as to the effect of the refusal on the Appellant and his wider family. These factors were all balanced against the public interest and the fact the Appellant did not meet the requirements of the Immigration Rules with a lawful and rational conclusion that there was no breach of Article 8 in the circumstances of this appeal. The grounds of appeal and submissions on these points were more akin to seeking to reargue the merits of the appeal and no specific issue was identified in the First-tier Tribunal's decision.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30th January 2024