



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006691

First-tier Tribunal Nos: HU/15715/2021
IA/17270/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

Muhammad Abdullah
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: No-attendance

For the Respondent: Mr Stephen Walker, a Home Office Presenting Officer, who appeared via CVP

Heard at Field House on 7 June 2024

DECISION AND REASONS

Introduction and background

1. This is an appeal by the Secretary of State for the Home Department (Secretary of State) against the decision of the First-tier Tribunal following a hearing on 23 May 2022 before First-tier Tribunal Judge Ali (the judge). That decision was promulgated on 27th of May 2022. The Secretary of State will continue to be referred to as “the respondent” in the present appeal, notwithstanding that his position is reversed in the current appeal proceedings. The appellant will continue to be referred to as “the appellant” therefore.
2. The judge decided the appeal in the appellant’s favour under Article 8 of the European Convention on Human Rights (ECHR), but the respondent appealed that decision on 31 May 2022. In the grounds of appeal against the decision of

the First-tier Tribunal the respondent contends that the conclusion that the judge came to in the First-tier Tribunal, that the respondent's decision constituted an unlawful interference with family life, was not sustainable. The appellant had been an adult at the date of the hearing and no adequate evidence had been placed before the Tribunal to support the conclusion that the appellant had established any family life with the sponsor.

3. Turning to consider those grounds in greater detail:
 - 1) The sponsor was said to have resided with the appellant's mother for brief periods of time in 2013 and 2021. The grounds assert that the judge had failed to consider adequately or at all the case of **Kugathas [2021] EWCA Civ 1847**. In that case, the Court of Appeal stated that when it comes to adult family members there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. It is not enough to assert love and affection between family members, there had to be something more. In this case there was no evidence to establish the existence of family life between the appellant and his sponsor.
 - 2) The judge held that, at the time of the appeal hearing, the appellant met the financial requirements for entry clearance, but that was not the test under the Immigration Rules if they were being considered. The test was whether at the time of the application the appellant met those requirements. Therefore, it was plain that the appellant did not meet the requirements of the Immigration Rules. Furthermore, the appellant was at the date of the hearing an adult. His failure to establish to the civil standard that he had established any family life with the sponsor, meant that the conclusion that he qualified under Article 8 was not sustainable outside the rules either.
 - 3) Finally, it was asserted on behalf of the Secretary of State in the grounds that the judge had failed to consider adequately the requirements of Section 117B of the Nationality, Immigration and Asylum Act 2002. That section provides that the maintenance of effective immigration controls is in the public interest. The need for immigrants to meet the financial requirements, is in the interests of the economic well-being of the UK as is the requirement that they be able to speak English, so that they are better able to integrate into society.
4. On 30th June 2022 Judge Elliott gave permission to appeal to the Upper Tribunal stating that no adequate explanation had been given as to how family life had been formed between the sponsor and the appellant and there had been a failure to apply the case of **Kugathas**. He gave permission to appeal on all grounds.

The hearing before the Upper Tribunal

5. The appeal hearing before the Upper Tribunal was attended solely by the respondent. Mr Walker submitted that no explanation had been given as to how family life had been established between an adult son and his stepfather. He therefore submitted that the judge had not reached a sustainable decision. I was invited to find that the FTT had erred in law, having regard to the case of **Kugathas** and other authorities. Initially, Mr Walker contended that if the Tribunal found a material error of law could be remitted for hearing in the First-tier Tribunal or, in the event that the Upper Tribunal wished to retain the case, updating evidence may be required before the decision is remade.

Discussion

6. The appellant has not attended or made any written representations in the present appeal. It has not been argued by or on his behalf that the decision of the First-tier Tribunal should be sustained for reasons other than those given by the judge.
7. Proper respect must be accorded to the First-tier Tribunal's decision. However, the judge's conclusion that the appellant, now an adult, had established a family life with Mr Mohammed Asghar, the sponsor, which it would be unlawful for the respondent to interfere with, is not sustainable. The burden of establishing that he had formed a family life lay on the appellant.
8. Having recorded that the appellant did not satisfy the requirements of Appendix FM and in particular the financial eligibility requirements of E - EC C 2.1 to 2.4, the respondent had not been satisfied that the appellant disclosed exceptional circumstances why the decision to refuse entry clearance would place him in breach of article 8 of the ECHR. In his decision, the judge noted the appellant's improved financial position since the appellant's application for entry clearance on 13 August 2021. By the date of the hearing on 23rd of May 2023 the appellant's financial situation had improved as he had become a permanent employee earning a gross salary of £22,500 . Also, the sponsor's financial position had improved as he was earning £30,980. The judge therefore reasoned that the appellant would, by the date of the hearing, meet the "eligibility financial requirements of paragraphs E - EC see 2.1 to 2.4". both parties agreed that by the date of the hearing the appellant would have met the financial requirements of the Appendix FM. However, this was of limited relevance.
9. The first task of the judge was to ask whether there was an interference with the appellant's right to a private or family life. The usual position would be that relationships between adult children and parents or step-parents or more distant adult relatives "do not amount to family life unless there are additional elements of dependency" (see **Kugathas**). If there were an interference of sufficient gravity to engage article 8, the judge should go on to ask: whether the interference in accordance with the law. Finally, the judge ought to have asked whether such interference was proportionate and necessary.

Conclusion

10. The appellant did not come close to satisfying the requirement that he had formed a family life with the sponsor in the UK of sufficient strength to fall within article 8. Nor did the judge set out adequately or at all the existence of such family ties with the sponsor. They had lived together for only short periods of time and his life was very much based in Pakistan. The appellant currently lives in Pakistan and no evidence has been placed before Tribunal to explain why he cannot continue to do so.
11. The absence of such evidence he did qualify under Article 8 on the basis of family life and he has not formed any private life in the UK. The absence of such findings adequately reasoned means that there was insufficient basis for the judge to allow the appellant's appeal.
12. I have therefore decided that there was a material error of law such that the decision of the FTT must be set aside.

13. In terms of disposal, Mr Walker initially was of the view that it was necessary to remit the matter back to the First-tier Tribunal. However, I have decided to remake the decision in the Upper Tribunal. I have considered whether further evidence may be appropriate but decided that such material should have been supplied in support of the original application.
14. It this appears appropriate simply to remake the decision on the evidence that was presented to the First-tier tribe Tribunal in the absence of any new evidence.
15. I have concluded that in the absence of any new evidence the appellant is unable to establish the existence of a family relationship between the adult appellant and his stepfather of such quality as to engage Article 8. Therefore, the ECO's decision to refuse entry clearance is clearly correct.

Decision

16. I find a material error of law.
17. The respondent's appeal is allowed.
18. The decision of the First-tier Tribunal is set aside. I remake the decision which is to dismiss the appellant's appeal against the refusal of entry clearance.

7th June 2024

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

