



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002586

First-tier Tribunal Nos: HU/50163/2020
IA/00508/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Monwar Hussain
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr D Balroop (Counsel), Lexwin Solicitors

For the Respondent: Mr T Lindsay (Senior Home Office Presenting Officer)

Heard at Field House on 21 February 2024

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Hussain, promulgated on 4th January 2023, following a hearing at Taylor House on 7th December 2022. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Bangladesh, and was born on 29th December 1983. He appealed against the decision of the Respondent dated 3rd July 2020, refusing his human rights claim in an application for indefinite leave to remain on the basis of ten year's long residence.

The Appellant's Claim

3. The Appellant came to the UK on 29th December 2009 as a Tier 4 Student. He did not return back to Bangladesh and since 4th August 2014 he has been in the UK unlawfully without leave to remain. There have been a number of applications by him in an attempt to secure lawful residence in this country. All have previously been refused. The present application for indefinite leave to remain is made notwithstanding the fact that the Appellant has not accumulated ten years continuous lawful residence in this country. The Appellant additionally relies upon the fact that he is a carer for his grandmother who is aged and in deteriorating ill-health, such that she depends upon him for her care.

The Judge's Findings

4. The judge held that it was "a mystery" why the Appellant should have thought that he was eligible for indefinite leave to remain on the basis of long-residency given that he had not accumulated ten years of lawful and continuous leave to remain in this country (paragraph 27). That application stood to be refused. Nevertheless, consideration was given to his position outside the Immigration Rules. Here, the main question was whether the Appellant enjoyed a family life with his grandmother and the judge found that "the appellant plays some role in the care of his 83-year-old grandmother" and that, "I am prepared to proceed on the basis that there is family life between them" (paragraph 31). The judge also held that the grandmother suffers from the conditions described by him, but that "it seems to me inescapable that the appellant exaggerated to large extent the role he plays in his grandmother's life given firstly, that she lives with her own son, daughter-in-law and a number of grandchildren." Moreover, "secondly, taking into account the norms of Asian cultures and the fact that the appellant is a male, whereas his grandmother is a female, the idea that he gets involved in her personal hygiene is implausible" (paragraph 33). The judge had regard to a psychologist's report which assessed the grandmother's mental health and observed that "she needs a great deal of physical emotional and moral support" and that "she is clearly very close to her grandson and she relies on him a great deal as other family members are busy with their lives" (paragraph 34). However, the judge, whilst noting that the Appellant's removal "would have some impact on his elderly grandmother", nevertheless held that, "she lives in the bosom of her son and his immediate family" and that "she has other children in this country", so that "the idea that the appellant, once he obtains leave to remain here will be willing and able to play as active a role in her life as he does now is completely unrealistic" (paragraph 35). The appeal was rejected.

The Grounds of Application

5. The grounds of application stated that the judge had erred in failing to have regard to the evidence of the Appellant's grandmother and aunt, both of whom had provided witness statements. On 24th May 2023, the First-tier Tribunal granted permission to appeal on the basis that the "the evidence of those two witnesses (who did not attend to give oral evidence) is capable of having a direct

bearing on the matter in dispute and there is no action as to why this evidence was not taken into account” (at paragraph 2).

Submissions

6. At the hearing before me on 21st February 2024, Mr Balroop submitted that this was an appeal before the judge where the Respondent had not fielded a Home Office Presenting Officer. He directed my attention to paragraph 31 of the determination where Judge Hussain had accepted that the Appellant both was related to his grandmother as claimed and also could play some role in the care of his 83 year old grandmother (paragraph 31). The judge had gone on to say that on this basis “there is family life between them” (paragraph 31). However, he had then said that it was “inescapable that the appellant exaggerated to a large extent the role he plays in his grandmother’s life” (paragraph 33). However, the Appellant had explained the role that he had played in his grandmother’s life in his witness statement (at paragraph 14), and given that there was no Presenting Officer, he was not cross-examined on his statement. Second, the judge had gone on to say that he would take “into account the norms of Asian cultures” (paragraph 33), whereby it was implausible for the female grandmother to have her personal hygiene looked after by her male grandson. However, if this was “the norm” then it had to be put to the Appellant, given that the Presenting Officer was not available to cross-examine him on this point. The Appellant had to know why he lost. Without his evidence being challenged, or his being cross-examined on his evidence, he was none the wiser about this. The judge had then gone on to say that, “he is a young man desperately keen to regularise his immigration status and to build a life for himself here” and that “I simply do not accept that once he achieves immigration status, he will continue to support his grandmother ...” (at paragraph 35). However, no reason is given for this finding. There was evidence from the aunt and there was evidence from the psychologist (cited at pages 9 to 21 of the bundle) and so if the judge was rejecting this (at paragraph 34), he had to explain why.
7. For his part, Mr Lindsay relied upon the Respondent’s Rule 24 response. Fundamentally, he submitted that the Appellant could not succeed because he has been living in the UK illegally for the last eight years and there was a strong public interest in his removal. The judge had made it clear that the Appellant’s status was “precarious” (at paragraph 32) and so limited weight had to be given to any private or family life that he had developed in consequence of that. In the end, the balancing exercise could only have led to one outcome and that was the outcome that the judge reached. As for the evidence itself, it was not the judge’s function to cross-examine the Appellant, even if there was no Presenting Officer in attendance, and the **Surendran** guidelines made this quite clear. When the judge states that the Appellant is exaggerating his claim what he is making clear is that the Appellant has not proven his case, although there is some level of care that he is being given, the Appellant is still a long way off proving his case.
8. Mr Lindsay went on to say that the evidence before the judge was fully taken into account in the formulation of the reasons for the decision. It was noted that with respect to the Appellant, “he helps her wash, dress, maintain her hygiene and help her with basic day-to-day tasks”, and that “he was always with her during the pandemic” (at paragraph 19). The judge even goes on to record that, “In oral evidence, he was asked to explain how his situation now was different from the 2019 hearing, to which he gave no response”, but then he “said that he

is illegally here” and that “he cannot do anything in a legal way” (paragraph 20). The judge had regard to the second witness who gave evidence, and this was Mr Mokbul Hussain, and the judge noted that he adopted his written statement as his evidence-in-chief (at paragraph 21) and that “he confirmed that he lives with his mother, his wife and their children” and that “his mother’s condition is not good”. The judge observed that although Mr Mokbul Hussain’s nephew (the Appellant) used to take her to appointments, it was nevertheless the case that, “if was not able, then he sent his son and daughter when they are free” (paragraph 22). Despite maintaining that he looked after his grandmother, the Appellant was not able to give any details in this respect when questioned (at paragraph 20). As for the psychologist’s report, if the Appellant is seen to have exaggerated his claim, then the same exaggeration would find its way into the psychologist’s report, and the judge was clear that if the Appellant started working he would not be able to care for his grandmother (at paragraph 20). Mr Lindsay asked that the decision of the judge below be upheld.

9. In his reply, Mr Balroop submitted that any consideration of Section 117B must not overlook the fact that it is not just the Appellant’s “family life” but also that of his grandmother, and this the judge had not done. As for the **Surendran** guidelines, if the judge needed to seek clarification there is nothing in those guidelines preventing him from asking the questions himself. He asked me to allow the appeal.

No Error of Law

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law such that it should be set aside. My reasons are as follows. This is an appeal where the judge was prepared to accept “that the appellant plays some role in the care of his 83-year-old grandmother” and that “there is family life between them” (paragraph 31). However, this is also a case where the Appellant had built up his family and private life over the last eight years while he was here unlawfully with no right to remain in this country. His condition was, as the judge made clear “precarious”. On top of that, the judge had found that the Appellant had exaggerated his claim. He gave reasons for why he came to that conclusion.
11. First, the grandmother lives with her own son, and daughter-in-law, and a number of grandchildren (at paragraph 33) the evidence from Mr Mokbul Hussain was that the Appellant used to take the grandmother to her appointments but that, “If he was not able, then he sent his son and daughter when they are free” (paragraph 22).
12. Second, the evidence from Mr Mokbul Hussain was that “his mother’s care needs are that she needs to go the toilet and also needs help with bathing”, and of course the lady lived not with the Appellant but with her own son.
13. Third, and no less importantly, the Appellant himself was asked after giving oral evidence in relation to his grandmother, “whether she has a regular course of treatment or whether any new treatment was proposed”, the judge recorded that “he gave no coherent answer” (paragraph 20).
14. On top of this, and finally, the judge was not satisfied, with the Appellant, living in a different household from the grandmother, that he was available to look after her personal hygiene needs.

15. It is in the context of these facts that the question of the evidence of the grandmother and the aunt (who it is said did not attend to give oral evidence, is to be evaluated. The judge was entitled to conclude that it would have made no material difference to the manner in which the evidence was ultimately evaluated.
16. There was nothing that the Appellant himself had been able to say which led the judge to conclude that the care that he provided was of the type that the Appellant claimed to be providing.
17. Moreover, this was bearing in mind that his private and family life had been developed at a time when his status was precarious and one the public interest lay in the proper administration of immigration control. Therefore, despite the best efforts of Mr Balroop before me, it should not be said that the judge fell into error.

Notice of Decision

18. There is no material error of law in the original judge's decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29th April 2024