



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005131
First-tier Tribunal No: HU/63970/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of January 2025

Before

UPPER TRIBUNAL JUDGE LANDES

DEPUTY UPPER TRIBUNAL JUDGE HOSHI

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MATVEI SAVKIN
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Ms Everett, Senior Home Office Presenting Officer

For the Respondent: Mr Gilbert, Counsel (instructed by Duncan Lewis Solicitors)

Heard at Field House on 14 January 2025

DECISION AND REASONS

1. By a decision dated 29 September 2024, First-tier Tribunal Judge Gray allowed Mr Savkin's appeal against the Secretary of State's 18 November 2023 decision to refuse his 11 July 2023 Article 8 European Convention on Human Rights ('ECHR') human rights claim, which was made in the form of an application for indefinite leave to remain in the United Kingdom ('UK').
2. On 4 October 2024, the Secretary of State filed an in-time application for permission to appeal.
3. By a decision dated 6 November 2024, First-tier Tribunal Judge Rodger granted the Secretary of State's application for permission to appeal.

4. On 6 December 2024, Mr Savkin filed an in-time rule 24 response (though it was not served on the Secretary of State; the filing of a document on CE-file does not constitute effective service on the Secretary of State).

Background

5. Mr Savkin is a national of the Russian Federation now aged 26. He has resided lawfully in the UK since he was aged 12: initially while he was at boarding school; then while he was studying for undergraduate and post-graduate degrees; and most recently as a graduate (he has started a business here).
6. Mr Savkin's application for indefinite leave to remain was made under §276B Immigration Rules, on the basis of 10 years' continuous lawful residence in the UK. The application was refused on the basis that: (i) Mr Savkin did not meet the requirements of §276B because he had been absent from the UK for a total of more than 548 days in the period relied on (he had been absent for 1058 days); and (ii) there were no exceptional circumstances which would render refusal a breach of Article 8 of the ECHR.
7. Before Judge Gray, Mr Savkin accepted that he did not meet the requirements of the Immigration Rules because he had been absent from the UK for too many days during the period relied on (though it was his case that the majority of the absences were beyond his control). He argued that the refusal of his application was unjustifiably harsh, and so disproportionate, for the purposes of Article 8 ECHR. Judge Gray allowed his appeal on this basis.

Error of law hearing

8. Both representatives confirmed that the documentation in the appeal comprised a hearing bundle (of 596 pages) and Mr Savkin's rule 24 response (of 3 pages). Ms Everett was provided with a copy of the rule 24 response and afforded time to read it. She did not object to its late service on the Secretary of State.
9. We heard submissions from both representatives on the question of whether there was a material error of law in Judge Gray's decision.
10. At the conclusion of the representatives' submissions, we notified the parties that we had decided: (i) that the Secretary of State had failed to demonstrate that there were any material errors of law in Judge Gray's decision; (ii) to uphold Judge Gray's decision; and (iii) to dismiss the Secretary of State's appeal. We said that we would provide our reasons in writing in due course, which we now do.

Discussion and conclusion

11. The Secretary of State's grounds of appeal are headed "*making a material misdirection of law*". In the first paragraph, they argue that Judge Gray allowed the appeal "*essentially on the basis of a 'near miss'*". That is, Judge Gray impermissibly allowed the appeal on the basis that Mr Savkin had narrowly missed meeting the requirements of the Immigration Rules (see e.g. *Miah v SSHD* [2012] EWCA Civ 261, [2012] 3 WLR 492).
12. In her oral submissions, Ms Everett explained this ground of appeal as follows. Judge Gray had essentially allowed the appeal because she found that Mr Savkin's absences from the UK during his school holidays and the COVID-19

pandemic were beyond his control, and therefore that the absences within his control totalled only 284 days which was well within the Secretary of State's permitted maximum of 548 days (Judge Gray's decision, §§33-36). We understand her argument to have been that this was therefore essentially a 'near miss' case or something akin to it, although Ms Everett acknowledged that Judge Gray had not explicitly said anything that would suggest that she allowed the appeal on the basis that Mr Savkin had narrowly missed the requirements of the Immigration Rules (i.e. that would suggest that this was a traditional 'near miss' case).

13. Further, Ms Everett submitted that Judge Gray had misdirected herself in finding that the absences during school holidays were beyond Mr Savkin's control, because what those absences really demonstrated was that his private and family life was elsewhere during those years, i.e. the absence of a strong connection with the UK. She accepted that this point was not included in the Secretary of State's grounds of appeal. However, she did not wish to apply for permission to amend the grounds; rather, she was relying on the argument on the basis that it was merely adding colour to the 'near miss' point. On that basis, we were prepared to hear it.
14. Mr Gilbert expanded on Mr Savkin's rule 24 response. He submitted that Judge Gray's decision was well-reasoned, and that she had not allowed the appeal essentially because the absences within Mr Savkin's control were well within the Secretary of State's permitted maximum.
15. We prefer Mr Gilbert's submissions. We do not accept the fundamental premise on which this ground is based, namely that the appeal was essentially allowed because the absences within Mr Savkin's control were within the maximum permitted by the Secretary of State, i.e. that this was the sole or operative reason that the appeal was allowed.
16. Though this was "*a material factor to be weighed strongly in the balance in [Mr Savkin's] favour because the [Secretary of State's] own policy acknowledges that the family and private life of persons who do not technically meet the rules is to be given weight in some circumstances, even when that life has been established at a time when the person's immigration status was precarious*" (see §36), it was certainly not the only factor weighed in the balance by Judge Gray.
17. We consider that Judge Gray adopted entirely the correct approach to her Article 8 ECHR analysis as follows:
 - a. She found that Article 8(1) ECHR was engaged on the basis of Mr Savkin's private life ties to the UK and his relationship with his younger brother (who is a child who also resides lawfully here), which she found to be a family life relationship for Article 8 ECHR purposes because Mr Savkin acts in a quasi-parental role for his brother (see §§25-28). Ms Everett confirmed that there was no challenge to these findings (i.e. that contrary to what is said in the Secretary of State's grounds of appeal, this is not a private life *only* case, but rather it is a private *and* family life case).
 - b. She acknowledged that she was therefore required to consider whether the proposed interference with Mr Savkin's private and family life was justified, by undertaking a proportionality assessment taking into account all material factors including in particular those in section 117B Nationality,

Immigration and Asylum Act 2002 and adopting a balance sheet approach (§29).

- c. She weighed in the balance the public interest factors in section 117B Nationality, Immigration and Asylum Act 2002 – including noting that: (i) where an individual does not meet the requirements of the Immigration Rules, the public interest normally requires the refusal of their application (§30(a)); and (ii) little weight must be given to a private life that is established at a time when the individual’s immigration status is precarious (§30(d)) (the grounds aver that the judge failed to remind herself that Mr Savkin’s private life had been established while his immigration status had been precarious but she clearly did so remind herself).
 - d. She weighed in the balance the factors in favour of Mr Savkin, specifically: (i) his family life with his brother – Mr Savkin provided valuable support to his brother which his parents, living abroad, were unable to provide (§31); (ii) the Secretary of State’s acknowledgement through her policy that it may be necessary to exercise discretion where excess absences are due to unavoidable circumstances (§32); (iii) that the majority of Mr Savkin’s absences were beyond his control – i.e. those during school holidays and the COVID-19 pandemic – and that those within his control were well within the maximum permitted by the Secretary of State (§§33-36); and (iv) that the absences did not undermine Mr Savkin’s strong connection with the UK in any event, which had been forged during his formative years, his secondary education, his higher education and his working life (§37). There was no challenge to any of these findings (subject only to Ms Everett’s oral submission about the absences during school holidays, as to which see below).
 - e. Weighing these factors in the balance, she concluded that the proposed interference with Mr Savkin’s private and family life would be unduly harsh and so disproportionate, and so she allowed his appeal under Article 8 ECHR (§38).
18. As to Ms Everett’s submission that Judge Gray misdirected herself in finding that the absences during school holidays were beyond Mr Savkin’s control, which was made merely to add colour to this ground of appeal, we do not consider that it undermines our analysis above. In short, the appeal was not allowed for the sole or operative reason that the absences within Mr Savkin’s control were well within the Secretary of State’s permitted maximum.
 19. Further, Judge Gray was certainly entitled in principle to find on the facts that the absences during school holidays were not within Mr Savkin’s control because he was a minor (§33) and that in any event they did not undermine his strong connection with the UK (§37). In any event, these findings have not been challenged: no challenge to them was pleaded in the Secretary of State’s grounds of appeal and before us Ms Everett said that she did not wish to apply for permission to amend the grounds in order to do so.
 20. The second and third paragraphs of the grounds read *“it is submitted that in light of the above that the FTTJ has failed to give adequate reasons for finding that the appellant’s Article 8 considerations outweigh the public interest in maintaining an effective immigration control. It is therefore submitted that the FTTJ has failed to give adequate reasons for findings on a material matter.”* This part of the grounds is not further particularised.

21. As we have set out above, Judge Gray adopted the correct approach to the Article 8 ECHR balance sheet analysis. Contrary to what was averred, she did not allow the appeal on a 'near miss' basis and she reminded herself of the factors of which she should take account under section 117B of the Nationality, Immigration and Asylum Act 2002. She found the appellant had a family life in the UK and not simply a private life. Her reasons were full and clear, and were amply sufficient for the parties clearly to understand why they had succeeded or failed (see e.g. *Flannery v Halifax Estate Agencies Ltd* [2000] 1 WLR 377 (CA)).
22. The grounds do not reveal any error of law by Judge Gray.

Notice of Decision

The Secretary of State has failed to establish that Judge Gray's decision contained any material errors of law. Judge Gray's decision is upheld. The Secretary of State's appeal is dismissed.

B. Hoshi

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 January 2025