



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/37968/2013

THE IMMIGRATION ACTS

Heard at Field House

On 1 December 2014

Prepared on 5 December 2014

Decision & Reasons

Promulgated

On 7 January 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR TARIQ KAMAL
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Blundell, Counsel instructed by Rashid & Rashid Solicitors

For the Respondent: Mr C Avery, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, date of birth 2 August 1986, appealed against the Respondent's decision, dated 29 August 2013, to

make removal directions, a form IS151A having been served on 2 September 2013.

2. The Appellant appealed against the decision of First-tier Tribunal Judge Verity who dismissed the Appellant's appeal on or about 10 June 2014. Permission to appeal was given by First-tier Tribunal Judge J M Holmes on 26 June 2014. In a determination promulgated on 2 September 2014, I found that there had been an error of law, for reasons therein given, so that the original Tribunal decision could not stand and the decision would have to be remade.
3. The issue in remaking related solely to the question of whether or not the Appellant's claim could succeed under Article 8 of the ECHR.
4. At the resumed hearing I heard evidence from the Appellant, his brother Mohammad Mohsin Kamal, his elder sister Aneesa Ali, Mumtaz Ali, his brother-in-law and husband of Aneesa, as well as a letter of support from Muqadas Bibi Ali and her husband and a witness statement from Muqadas Bibi Ali, which I took into account. Mr Avery had the opportunity to cross-examine the live witnesses who essentially confirmed what they had stated in writing and confirmed the general picture that the Appellant and his brother visited other relatives in the United Kingdom on a regular basis, even if more regularly by the Appellant, and saw their families. It was claimed that those visits go beyond birthdays and holidays.
5. Ms Aneesa Ali confirmed the role that she largely played in the life of the Appellant and other family members following the death of her mother and father. The fact is unchallenged that the Appellant is the sole close family member who is not living in the United Kingdom with status to do so. It is also unchallenged that in Pakistan the accommodation which the Appellant had lived in with other family members had been state accommodation associated with their father's employment in the police. Eventually they had been required to move out upon the death of the Appellant's mother and that the Appellant had for a time shared accommodation with friends.

6. The evidence also confirmed that the other family members, that is in the United Kingdom, did not return to Pakistan partly by reason of security and cost but also because they had no cause for family reasons to do so. It was also clear that the Appellant had been a bona fide student in the United Kingdom until his right to remain had come to an end and that he has as a fact had a private life in the United Kingdom and, although he is an adult, his elder sister still has a significant 'maternal' role to play in his life. Nevertheless, it seemed to me the family life he enjoys with his sisters and their families is also part of his private life in the United Kingdom.
7. The Appellant said that he has no family home or job to return to in Pakistan and he would not be able to survive in the United Kingdom without his family's emotional, moral and financial support.
8. The cross-examination of the witnesses did not essentially attack the claimed family life relationship or the part the Appellant played in their lives or they in his.
9. It is of note of course that the adverse immigration decision for this Appellant on 29 August 2013 was effectively the same decision provided to the Appellant's brother, Mohammad Mohsin Kamal,(MMK) of 28 August 2013.
10. I have taken into account the issues of fact raised and the other points made upon the MMK's case for, with one minor material difference, their personal circumstances, their family life issues and private life issues were identical. The only material difference I find is that the Appellant had been for a brief period in employment on an occasional basis but he was still reliant upon the sponsorship of his sister, Ms Aneesa Ali as she later became. I do not find it necessary to repeat the reasoning of Judge Gillespie of February 2014 as to why he found MMK did not meet the relevant requirements of paragraph 317 of the Immigration Rules in force at the date of application. It seems to me that for similar reasons this Appellant could not bring himself within paragraph 317(i)(f) of the

immigration rules because the evidence did not show that the Appellant met the requirements of being alone in the most exceptional circumstances prior to arrival in the United Kingdom.

11. Similarly I agree, and it was not effectively argued to the contrary, the Appellant could not meet the requirements of paragraph 276ADE nor had that position changed.
12. To a degree the position in relation to consideration of the case under Article 8 outside of the Immigration Rules, which are not a complete code in any event, was not argued that there was any error of law by the Secretary of State in failing to consider those matters. The Secretary of State did not consider the matter outside of the Rules but no issue is taken as to the legal consequences of that omission so much as the submissions made to me were made on the basis that the Appellant did or did not fall to benefit from an Article 8 claim.
13. I note the circumstances of the evidence given by the Sponsor, Mrs Ali, the support that they have given MMK as much as the support they give to this Appellant.
14. It also appears to be the case that the Appellant has strong ties with his sister, her family, and her husband in particular, and his other sister Ms Muqadas Bibi Ali. I also have received a statement of MMK which sets out how it came to pass that he did not give evidence before First-tier Tribunal Judge Verity when she heard the appeal of the Appellant on 14 May 2014. There was no substantive challenge to the explanation given or the contact they respectively had with other family members and the support they continued to receive.
15. I note that Judge Verity recorded the evidence of the Appellant's sisters. The judge's findings did not reject the credibility or reliability of the Appellant or his sisters in the United Kingdom and there was no challenge to the genuineness of the evidence from fellow family members. My own impression of the witnesses I heard was similarly that they were reliable

and credible as to the family life they all share together and the extent to which the Appellant and MMK remain supported by their Sponsors and their respective spouses.

16. Judge Gillespie found the family relationships close and for that clear reason went on to conclude that the appeal should succeed under Article 8 ECHR grounds in respect of MMK.
17. For my part I find there is no material differences between the situation of MMK and the Appellant other than his age and that that is not material in the way the family described their relationship with the Appellant. I readily accept that the Appellant is three years older than MMK but the age of MMK was taken into account in the circumstances of his appeal and in this case I do not see the age difference makes a material difference to the point.
18. In the determination I gave on the error of law issues, which I do not need to recite, it is well recognised as shown by the case of AA (Somalia) [2008] Imm AR 1. that there needs to be consistency of treatment between cases but that there must be a material overlap of evidence other than a mere overlap of evidence. In the considerations of those matters it is plainly relevant as to the situation as to whether there is the same factual matrix, such as the same relationship or the same events or series of events.
19. It does not necessarily follow that a favourable decision in one appeal with a different claimant inevitably means the same decision should be made in another appeal by a different claimant. Rather it seems to me that there is a material overlap in the circumstances of MMK and the Appellant and that had these matters been linked for a joint hearing the likelihood is that before Judge Gillespie a similar decision would have been reached for this Appellant. I find this is likely simply because the facts are so closely intertwined and amount to the same issue.
20. Before Immigration Judge Verity she evidently took the view that the family life was “at best tenuous”. How she reached that view is difficult to

tell, bearing in mind the evidence that had been provided and the findings that she had made on the evidence received and the standing of the witnesses.

21. The other factor was the absence of MMK giving evidence. Thus the judge was unable, as she put it, to ascertain how close the relationship between the brothers was, whether they shared joint activities and pastimes etc. for she said

“It is therefore clear that the one person with whom the Appellant lives on a semi permanent basis did not give evidence in his support whilst his two sisters whom he visits each month did so. I have already indicated that I regard family life in this case to be at best tenuous.”

22. It seems to me that, through no fault of the judge, there was through the omission of MMK’s presence and evidence now provided demonstrates the material overlap between their factual situations.
23. In the circumstances I find that, first, there is as I have indicated not just overlapping evidence but essentially the same factual matrix in relation to the family relationship and the events. Secondly, it seems to me that there has been nothing to indicate any basis to revisit the decision of Judge Gillespie to raise doubts as to the analysis made.
24. In reaching the decision that I do, I take into account and apply the cases of Razgar [2004] UKHL 27 and Huang [2007] 2 AC 167. It seems to me that the Appellant plainly has a private and family life in the United Kingdom with his siblings and their families, as well as with his brother MMK. It is an unusually close family, perhaps born of the circumstances of the death of their parents and the migration of all other family members to the United Kingdom.
25. I am satisfied in the sense contemplated by Kugathas [2003] EWCA Civ 31 that was expressed in Huang paragraph [18]:

“The reported cases are of value in showing where, in many different factual situations, the Strasbourg Court, as the ultimate guardian of Convention rights, has drawn the line, thus guiding national authorities in making their own decisions. But the main importance of the case law is in illuminating the core value which Article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant’s dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.”

26. In this case I find there is private and family life of the Appellant with his siblings and their families. I find there is family life together, bearing in mind the longstanding and present reliance upon those family members. I find that the effect of interference, or lack of respect, is of sufficient seriousness to engage with the operation of Article 8 (1) ECHR. I am satisfied that the Respondent’s decision is lawful and properly serves Article 8(2) objectives.
27. I therefore have to make a judgment on whether or not the interference is proportionate to the legitimate aims to be achieved. That is a matter of judgment and in reaching a decision on that issue I have fully taken into account the provisions of Sections 117A and B in relation to the public interest considerations under Article 8. Those provisions are as amendments to the Nationality, Immigration and Asylum Act 2002. The Appellant plainly speaks English and gave evidence without using an Urdu interpreter. The Appellant, with family support, as has been now

longstanding, is not a burden upon the taxpayer and I can find no reason why he could not properly integrate into society in the United Kingdom.

28. The Appellant has, on the submissions made to me, been lawfully in the United Kingdom and his immigration status has not been precarious. I take account of the public interest and the weight to be given to it and the delay in making a decision upon the application. There is not and never has been any explanation of the Respondent's delay but I do not regard the delay in this case as being particularly significant, bearing in mind it is not claimed that the family relationship is one that has been created simply through presence in the United Kingdom.
29. In these circumstances I am satisfied that the Respondent's decision was disproportionate. I have attached significant weight to the public interest and would have reached a similar decision irrespective of the outcome of MMK's appeal.

NOTICE OF DECISION

The appeal on immigration grounds is dismissed.

The appeal under the Immigration Rules is dismissed.

The appeal on Article 8 ECHR grounds is allowed.

No anonymity order is required or necessary.

Signed

Date 5 January 2015

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT **FEE AWARD**

No fee was paid and therefore there can be no fee award.

Signed

Date 5 January 2015

Deputy Upper Tribunal Judge Davey