



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

Appeal Number: VA/00416/2014

THE IMMIGRATION ACTS

Heard at Field House

On 28th April 2015

Determination

Promulgated

On 22nd May 2015

Before

**UPPER TRIBUNAL JUDGE STOREY
UPPER TRIBUNAL JUDGE LINDSLEY**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MR JOSEPH ASIDEU AMOAH
(ANONYMITY ORDER NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr P Deller, Senior Home Office Presenting Officer

For the Respondent: Mr H Kannangara, Counsel instructed by Immigration Practitioners LLP

DECISION AND REASONS

Introduction

1. Although the appellant is the Secretary of State we will refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of Ghana born on 14th April 1991. He applied to come to the UK as a family visitor to see his father who is a British citizen living in the UK. His application was refused on 12th December 2013. His appeal against the decision to refuse entry clearance was allowed on Article 8 ECHR grounds by First-tier Tribunal Judge Lingam in a determination promulgated on the 29th December 2014.
3. Permission to appeal was granted on the basis that it was arguable that the First-tier judge had erred in law in allowing the appeal under Article 8 ECHR given the appellant was an adult, and because it was arguable that an inadequate assessment of proportionality had been carried out which resulted in Article 8 being used as a general dispensing power.
4. The matter came before us to determine whether the First-tier Tribunal had erred in law.

Submissions

5. Mr Deller relied upon the grounds of appeal and made oral submissions. He accepted that there were no credibility issues in the appeal as the sponsor was found to be a credible witness.
6. Mr Deller amplified firstly the contention that Judge Lingam erred by treating the appellant as having family life with his father given that he was an adult. It was argued that the law in Kugathas v SSHD [2003] EWCA Civ 31 had not been properly applied. There were no proper reasons for the finding that the appellant had a close relationship with his father as set out at paragraph 25 of the decision. Mr Deller accepted that at the time of decision the appellant had not in fact been earning any money as he was a student who was financially support by his father. (Subsequent to the decision he had earned a small allowance whilst doing national service but this was of no relevance.) If the appellant and father had a close relationship it was perhaps questionable why the father had not visited him more often. However he conceded that ultimately it was potentially open to Judge Lingam to find that there was family life given the issues of the mother's behaviour in taking the appellant away from his father as a child and then abandoning him on her remarriage in Ghana.
7. Further, Mr Deller did not pursue a separate ground, which was that even if there was a family life relationship the decision to refuse entry clearance did not interfere with the existing pattern of that relationship, as he accepted it was important to be able to develop any family life which did exist. Ultimately Mr Deller accepted that it was legally open to the First-tier Tribunal Judge to find that the refusal of entry clearance did amount to an interference with any family life which was found to exist.
8. Mr Deller argued that the proportionality assessment at paragraph 27 of the decision of the First-tier Tribunal was not adequate as it was not

clear why the father could not visit the appellant in Ghana or elsewhere given he had 28 days of annual leave and a good job with the Ghana High Commission. There was no adequate exploration as to why alternative ways of having family life together were unsatisfactory. The overall effect was to use Article 8 ECHR as a general dispensing power.

9. Mr Deller accepted that the decision of Judge Lingam was consistent with the approach taken by the Upper Tribunal in Mostafa (Article 8 in entry clearance) [2015] UKUT 112. There were clear findings that the appellant could meet the requirements of the Immigration Rules disputed in the original refusal notice, and in the light of Mostafa this was rightly given weight in the proportionality balancing exercise.
10. Mr Deller ultimately did not argue that the reference to s.117B (4) &(5) of the Nationality, Immigration and Asylum Act created any arguments that an error of law had been committed.
11. Mr Kannangaran submitted that Judge Lingam had made a clear and detailed decision which disclosed no errors of law.
12. Mr Kannangaran submitted that Judge Lingam had properly directed herself on the law regarding adult children and family life, and had cited Kugathas in her findings. She had looked at issues of emotional ties and financial dependency. The extent of the appellant's work was clear to Judge Lingam. Judge Lingam had noted the fact that the appellant's father also provided guidance on studies and career. She had started from the position, which was clearly correct on the facts of the case as set out to her, that the appellant did not have family life in Ghana: although he lived with his paternal uncle there was no evidence of family life ties with this gentleman. The use of the word "probably" at paragraph 25 was of no relevance as Judge Lingam had clearly concluded the appellant and his father had family life. The conclusions she came to at paragraphs 17 and 25 of her decision were properly open to her.
13. Mr Kannangaran submitted that proportionality had also been properly considered, particularly in the light of the approach taken in Mostafa. He noted that the appellant had applied for a one year multiple entry visa, and that he had said on his application form he wished to come for a visit of at least four weeks. Further when the letter from the appellant's college was examined he did not have exams until March 2014 so could have stayed for three months. The appellant's father was a diplomat with a responsible job and could not make equivalent visits to Ghana. This was a finding that was open to the First-tier Tribunal on the facts of this case. It was also reasonable for the appellant to want to see the place where his father lived in the UK and to experience his life in this country.
14. Neither Mr Deller nor Mr Kannangaran felt the use of the word "best" in the final sentence of paragraph 27 of the First-tier Tribunal decision

meant that Judge Lingam had departed from a proper approach to proportionality.

Conclusions

15. Mr Deller conceded that it was ultimately open to the First-tier Tribunal to have found family life between the appellant and his father on the particular facts of this case and that refusal of entry clearance showed insufficient respect for that family life. We are satisfied that this was the case too. At paragraph 15 Judge Lingam sets out a detailed description of the development of the relationship between the appellant and his father in the UK, and the difficult and traumatic behaviour of the appellant's mother and how this had enhanced the relationship between the appellant and his father. She looks at financial support and emotional closeness and the provision of guidance. She clearly applies the test in Kugathas at paragraph 26. Although over 21 years old the appellant was still, at the date of decision, a student dependent on his father emotionally and financially.
16. It is also clear that the appellant and his father wish to move the relationship on from telephone contact to one involving greater face to face contact: see paragraphs 15, 25 and 26 of the decision of the First-tier Tribunal. It was therefore open to the First-tier Tribunal to find that the refusal of entry clearance did interfere with this family life. Further issues of whether such development of the relationship necessitated a grant of entry clearance were properly dealt with under the consideration of the proportionality of the interference with family life represented by the refusal of entry clearance.
17. Mr Deller conceded that weight must be given to the First-tier Tribunal's findings at paragraph 27 of the decision that the appellant could in fact meet the requirements of the Immigration Rules put in dispute in the entry clearance refusal notice in the light of Mostafa, and that Judge Lingam had therefore acted appropriately in doing this in her examination of proportionality. Judge Lingam also gave proper weight to her finding that due to the sponsor's heavy work commitments he is only able to spend a short periods with his son in Ghana. In his evidence the sponsor had explained that he had 28 days of annual leave but also that he was unable to go to Ghana due to financial constraints and employment obligations, see paragraph 10 of the decision of the First-tier Tribunal. We find it was open to the First-tier Tribunal to conclude that there were not alternative ways in which the appellant and sponsor could reasonably be expected to take proper opportunity to enjoy time together in the context of a family visit in the light of this evidence, which was accepted as credible. The consideration of proportionality was therefore conducted lawfully.
18. We therefore conclude that the decision of the First-tier Tribunal did not disclose any errors of law.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. The decision of the First-tier Tribunal is upheld.

Signed:
Upper Tribunal Judge Lindsley

Date: 18th May 2015