Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/05732/2015
IA/05912/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 April 2016	**On 19 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MARY AGYAPOMA SAKYI
VICTORIA AGYAKOBEA SACKEY
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Burrett, Counsel, instructed Ozoran Turken Solicitors
For the Respondent: Ms A Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge M A Khan (the judge), promulgated on 24 September 2015, in which he dismissed the Appellants' appeals. Those appeals were against the Respondent's decisions of 26 January 2015, refusing to vary leave to

remain and to remove the Appellants from the United Kingdom under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. These cases arise out of tragic circumstances. The first Appellant is the aunt of R and D, both British citizens who have always resided in this country. The second Appellant is their grandmother. In May 2012, when D was still a minor and R only a young adult, their father murdered their mother and then killed himself. The Appellants sought entry clearance to attend the mother's funeral. This was duly granted. Once in this country, the Appellant's sought an extension of leave in order to provide additional care for D and R. Further leave was granted by the Respondent on a discretionary basis, in particular that care should be provided to D until she became eighteen. On 18 November 2014 the Appellants sought another extension. These applications were refused

The judge's decision

3. In a fairly brief decision, the judge finds that D and R had benefited from the Appellants' presence in the United Kingdom (paragraph 37). He finds that other friends had assisted D and R prior to the Appellants' arrival, and that D and R had managed "quite well". R had completed a degree and was in employment; D was at university (paragraph 38). He finds that D and R had forged their own lives and that the purpose initially served by the Appellants had now been served (paragraph 39). There was no family life as between the Appellants and D and R (paragraph 41). The Appellants' private life could continue in Ghana. Having applied the relevant factors under Part 5A of the NIAA 2002, the judge concludes that removal would be proportionate. The appeals were dismissed.

The grounds of appeal and grant of permission

4. The grounds assert that the judge erred in three ways: in finding that no family life existed; in failing to consider the evidence before him; in failing to undertake an adequate proportionality exercise.

5. Permission to appeal was granted by First-tier Tribunal Judge Landes on 29 February 2016.

The hearing before me

6. Mr Burrett submitted that the errors identified in the grounds were made out. They were, taken as a whole, material to the outcome of the appeals. Ms Fijiwala submitted that the judge had taken all relevant matters into account. Even if there were errors, these were not material.

Decision on error of law

7. I announced to the parties at the hearing that I found there to be material errors of law in the judge's decision. I now give my reasons.

8. In respect of family life, the judge does not engage with the evidence as a whole when reaching his finding on this point. He fails to deal with the evidence before him concerning the nature of the ties between the Appellants and D in particular. If the judge had this evidence in mind, there are no adequate reasons for rejecting it and thus concluding that there was nothing beyond "normal" ties.

9. It is right that the judge found the Appellant's to have private life here, if not family life. In principle, this could lead to the conclusion that the error set out above is not material. However, the manner in which the judge has dealt with private life is to focus exclusively on the Appellants, without proper regard to D and R. As a consequence, the private life consideration has missed out important aspects of the Appellants' case. The error is material.

10. Related to the first error is the judge's failure to deal with relevant aspects of the evidence before him, in particular a detailed letter from a psychotherapist and statements from R and D themselves (all contained within the Appellant's bundle). With respect to the judge, too much space was taken up by citations from Part 5A of the 2002 Act and case-law, and not enough afforded to the evidence and findings based thereon. This is a second material error.

11. Finally, as a result of the first tow errors, the judge has, I find, failed to conduct an adequate balancing exercise based upon the evidence before him.

12. In light of what I said, the judge's decision is set aside.

Remaking the decisions in the Appellants' appeals

13. Both representatives were agreed that I should remake the decisions on the evidence before me. Neither of the Appellants attended the hearing. I was satisfied that they were aware of the hearing. Mr Burrett was content to proceed in their absence. There was in my view no need for additional oral evidence and thus I decided to proceed.

The evidence before me

14. I have before me the following evidence: the Respondent's bundle before the First-tier Tribunal and the Appellant's bundle (AB).

Submissions

15. Mr Burrett made the following submissions. The Appellants could not succeed under the Rules. The Respondent had previously granted an extension of leave to the Appellants on compassionate grounds. The friends referred to by the judge had only assisted for some three or four months. The Appellants continued to provide vital support, particularly for D. I was referred to D's statement at pages 26-28 AB. There was no evidence of professional input now. R lives together with the Appellants. D resides in Northampton (where she attends university) during the week but comes to London every weekend to see the Appellants. I was referred to the GP report at pages 41-42 AB, and to the psychotherapist's report at 166-167 AB. Overall, Mr Burrett submitted, there are compelling circumstances in these cases.

16. Ms Fijiwala relied on the fact that the Rules could not be satisfied. The Respondent's decision letters were relied on. D was now an adult and was living away from home. Any therapy D is receiving could continue. She has her brother's support. The reasons why leave was extended by the Respondent previously have now gone.

Findings and reasons

17. I have considered the evidence as a whole. The burden of proving relevant facts rests with the Appellants.

18. I have no proper reason to doubt the credibility of the Appellants, R or D. The Respondent has not sought to challenge the reliability of their evidence. I find all the evidence before me to be credible, including that from independent sources.

19. R and D's mother was murdered by their father in May 2012. He then committed suicide. It is rather stating the obvious that this was an extremely traumatic experience for R and D. D was then still a minor (being fifteen years old), a fact which I would infer made the matter even worse. R was an adult, but not by a substantial period.

20. I find that the Appellants initially arrived here on the genuine basis of wishing to deal with the mother's funeral. They had every intention of leaving the United Kingdom. I accept that R and D had some help from friends here, but that this was for a short period only. I also find, as stated by the first Appellant, that in fact these friends did not provide real help beyond the time of the funeral.

21. Unsurprisingly and to their credit, the Appellants saw the suffering of their relatives and regarded it as a familial duty to assist. I find that they sought legal advice and them made an in-time application to the Respondent for an extension of leave.

22. The Respondent was clearly sympathetic to the family's situation: an extension of leave was granted (not something that is done lightly). The extension lasted until D reached her eighteenth birthday.

23. I find that R did complete his degree and is now in steady employment. He still lives with the Appellants. Having regard to his age when the tragic events occurred in May 2012 (twenty years old), his current circumstances, and his statement at page 31 AB, I infer that he has probably coped better with what has happened than his sister. That is not to say that the Appellants have played an insignificant role in his life. I find that their presence and support will have been crucial in helping to ensure that R maintained a relatively focused line during the completion of his degree and into the world of work. Taking the evidence as a whole, and in particular the horrific genesis of the case and the on going support offered by the Appellants, I find that there is a special bond between them and R which goes beyond a 'normal' relationship.

24. Turning to D, I find that the evidence set out in her statement at pages 25-30 AB is compelling. It is quite clear that the murder and suicide constituted a devastating blow to her emotional wellbeing. There was obviously a very close bond between D and her mother. I accept, based on what is said in her statement at pages 28-29 AB, that to an extent the Appellants have filled the gap left by her mother. This is reflected in the detailed report from Ms Dodgen, psychotherapist, at pages 167-168 AB. I accept that D was presenting with features of PTSD and Severe Major Depressive Disorder when Ms Dodgen met her in 2014. There is nothing in the rest of the evidence before me which contradicts this state of affairs. I find that it is not inconsistent with D's ability to have started her degree, given the support she was receiving from the Appellants and R. The importance of the support from the former is remarked upon by Ms Dodgen at page 167 AB. I find this evidence, combined with that of the Appellants and D, goes to show that there are very close bonds indeed as between D and the Appellants.

25. I find that D is currently in her second year of the degree course at university. I find that she lives in student accommodation during the week, but comes to London every weekend to see R and the Appellants, as claimed in the evidence before me.

26. I find that D does in fact continue to rely heavily upon the emotional support of the Appellants notwithstanding that she is undertaking the degree in Northampton. I accept D's evidence that without the support of the Appellants she could not have begun the degree course in the first place. I infer that for the Appellants to depart midway through the course would be a very significant blow to D, with the distinct possibility that she might not compete her studies.

27. There is no evidence before me that D is receiving on going specialist mental health treatment. I find that she is not. I infer from this that her situation is not as bad as it otherwise could be, and also that the Appellants are providing useful support which has a positive impact on her wellbeing.

28. In respect of the Appellants' own personal circumstances, I find that they had settled lives in Ghana prior to arriving here. I find that they could quite readily re-enter Ghana and fit back into those lives now. There is no evidence to the contrary.

29. The second Appellant may be relatively elderly now, but I have no evidence that any medical conditions are significantly disabling, or that treatment is not available in Ghana. I emphasise that the appeals have not been argued on the basis of any difficulties for the Appellants in reintegrating into Ghanaian society. I find that there are no such difficulties.

Conclusions on the Article 8 claims

30. Neither Appellant can satisfy the Rules as they relate to Article 8. This in itself counts against them when conducting the proportionality exercise. It also means that I am following the Razgar step-by-step approach.

31. I conclude that there is family life as between the Appellants, R and D. As a consequence of the tragic events in 2012 and the on going support provided by the Appellants to R and D, there are ties beyond those to be expected between the individuals concerned.

32. The Appellants also have private lives here, the most significant aspect of which is the relationship with R and D.

33. Removal would constitute a sufficiently serious interference with the family and private lives so as to engage Article 8.

34. The Respondent's decisions were in accordance with the law and they pursue a legitimate aim.

35. So to proportionality. Having regard to section 117B(1) of the 2002 Act, the public interest in maintaining immigration control is a weighty factor in this case. Both Appellants have only ever been in this country on a very limited basis. Added to this is the fact that they cannot meet the Rules.

36. I do not have a great deal of evidence relating to the Appellants' ability to speak English, but I am prepared to accept that it is reasonable.

37. As far as I can see, the Appellants have, through various sources, supported themselves financially whilst here. Although it is said that the second Appellant has certain conditions, there is no evidence to suggest that she has had recourse to the NHS (at least not yet), and there is no evidence of an NHS debt.

38. The Appellants have not been here unlawfully and so section 117B(4) does not apply.

39. The Appellants' position in the United Kingdom has always been precarious, albeit lawful. Thus, section 117B(5) applies. The limitation of weight attributable to the private lives also applies to the family lives.

40. In order to succeed outside of the Rules, "compelling" or "exceptional" circumstances need to exist. In my view they do, although their scope is limited.

41. It is clear to me that the origins of these cases disclose very compelling circumstances. The Respondent has not sought to argue otherwise. Indeed, the extension of leave granted to the Appellants indicates a ready acceptance that the situation then compelled a favourable exercise of discretion.

42. I conclude that such circumstances remain in respect of D. It is of course right that she is undertaking a degree and that she lives away from home during term-time weeks. However, it is also right, as I have found, that she continues to rely heavily on the support of the Appellants the whole time. She sees them every weekend and clearly regards them as being a bulwark against her emotional struggles. The compelling nature of these circumstances has subsided over time *to an extent*, and it will probably continue to do so. Yet *as of now* I conclude that they remain material and sufficient to satisfy the 'test' enunciated in SS (Congo) [2015] EWCA Civ 387. Taking matters in the round, I would therefore conclude that the Appellants' connections with and support for D constitute "compelling circumstances" for the duration of the latter's degree course. Beyond this, and on the reasonable basis that D will avail herself of other support mechanisms/treatments, it is unlikely that the Appellants' claims will retain their exceptional quality.

43. I conclude that the currently compelling nature of the cases outweighs the adverse matters in relation to Part 5A of the 2002 Act, as set out above.

44. As they relate to R, the Appellants' cases do not disclose sufficiently compelling circumstances.

45. Aside from the circumstances relating to D the Appellants' cases clearly could not succeed on any other basis.

46. I therefore allow the Appellants' appeal on the fairly limited basis outlined above.

47. I am aware that the usual grant of leave in such situations is thirty months. However, the Respondent's guidance allows for lesser periods of leave to be granted where appropriate. In my view, the present appeals might well fall into the category of cases in which a shorter period of leave is granted.

Anonymity

48. I make no direction in these appeals. None were sought.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I re-make the decision by allowing both appeals on Article 8 grounds outside of the Immigration Rules.

Signed Date: 17 May 2016

H B Norton-Taylor
Deputy Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeals and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award because the relevant evidence on which the Appellants have relied on in the success of their cases has been provided after the applications and notices of appeal.

Signed Date: 17 May 2016

Judge H B Norton-Taylor
Deputy Judge of the Upper Tribunal