



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03666/2017

THE IMMIGRATION ACTS

Listed at Glasgow
On 4th October 2018

Decision Promulgated
On 10th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR AMIRMOHAMMAD ZABOLI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Caskie, Counsel, instructed by Maguire Solicitors

For the respondent: Mr Mathews, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge RG Handley who dismissed the appellant's appeal in a decision promulgated on 14 March 2018.

2. The appeal was against the decision of the entry clearance officer to refuse the application for settlement under paragraph 352D made on 19 December 2016. The appellant was born on 24 April 1988 and is a national of Iran. He applied to join his father, hereinafter referred to as his sponsor, who had been granted refugee status. His application was refused because he was not under 18 at the time of application as required by the rules. Rather, he was 28 years old.
3. Permission was granted on the basis it was arguable that the judge failed to make findings as to whether family life existed and did not properly apply the decision of Kugathas -v- SSHD EWCA 31.

At hearing.

4. Mr Caskie indicated that he had been speaking with the presenting officer, Mr Matthews in advance of the hearing and the presenting officer acknowledged that there were 2 material errors of law in the decision. The 1st was that there was no finding as to the extent to family life between the appellant and his parents. The 2nd was there was no finding on proportionality. Mr Matthews confirmed this was the respondent's position.
5. The court file contains the respondent's instructions in relation to adult dependent relative. There is a statement from the appellant's sponsor, his father. It states that he came to the United Kingdom in December 2015 and successfully claimed asylum. He states that apart from the appellant they have 3 daughters, born respectively in 1980, 1972 and 1976. All of his daughters are married with young children and live in different parts of Iran. He also has 2 children from a previous relationship but they have little contact. He states that his wife left Iran to join him in March 2017 with the intention that the appellant would follow. He indicates that the appellant has visual problems and describes him as being almost blind. He indicates that the appellant is presently residing in a Care Home. There is also a statement from the appellant's sister stating that her brother has no ability to live on his own.
6. At paragraph 25 of the decision First-tier Tribunal Judge Handley stated he had to determine when an adult ceased to enjoy family life with his parents. The judge did not feel the medical evidence indicated the appellant was lined and could not manage his own care needs. There was a letter from a lawyer stating the appellant needed help with day-to-day activities although the judge commented it was not clear the nature and extent of the assistance required. The judge questioned why the appellant's mother would come to the United Kingdom when his own situation was undecided. The judge referred to the care contract which refers to 24-hour care as indicative of significant care needs. However, the

judge felt this was not consistent with the statements. The judge then refers to the appellant's sisters and suggests they could assist.

7. For the hearing I have been provided with the decision of the Upper Tribunal in Pun and others -v- SSHD [2017] EWCA Civ 2106. This case considers the meaning of family life between adults. Within the instructions on adult dependent relatives there is reference to the Court of Appeal decision in Britcits -v- SSHD [2017] EWCA 368.
8. I agree with the representatives that the decision of First-tier Tribunal Judge Handley does not adequately address the question of whether there is family life between the appellant and his parents at this stage. The judge refers to the claimed physical dependency but points out the appellant's mother came here. The judge acknowledged the appellant had vision issues but believed he was self-caring. However there is no proper analysis of the level of family life he enjoyed in Iran with his parents and the contact thereafter. There is no reference to any emotional needs. There is no real assessment of finding in relation to family life. Following from this there is no examination of the proportionality of the decision if family life existed. Consequently, I agree with the representatives that the decision materially errs in law and cannot stand.

Decision

The decision of First-tier Tribunal Judge Handley materially errs in law and is set aside. The appeal is remitted to the First-tier Tribunal for a de novo hearing.

Francis J Farrelly

Deputy Upper Tribunal

Directions.

1. Relisting in the First-tier Tribunal in Glasgow before any judge save for First-tier Tribunal Judge Handley.
2. Mr Caskie has indicated there is no need for an interpreter.
3. The appellant's representatives should prepare new bundles for hearing including any up-to-date medical evidence in relation to the appellant as well as documentation supporting his claimed level of care needs in Iran. Evidence showing the position within the family before they separated in the context since would undoubtedly assist. The decision in Britcits -v- SSHD [2017] EWCA 368 provides a useful reference to assessing emotional needs in a care situation and this could be considered.
4. It is anticipated that the hearing should last no more than 2 hours

Francis J Farrelly

Deputy Upper Tribunal