



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/16556/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 20 June 2018

Decision & Reasons Promulgated  
On 3 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

TAHIR MAHMOOD  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Pennington-Benton of Counsel, instructed by MA Solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Cameron promulgated on 8 January 2018, in which he dismissed the Appellant's appeal against a decision of the Respondent dated 22 June 2016 to refuse leave to remain in the United Kingdom.
2. The Appellant is a citizen of Pakistan born on 15 October 1965. On 16 December 1988 he married Aisha Jabeen Mahmood (d.o.b. 19 April 1967), a British citizen from birth. The couple have three children. The oldest, a daughter, Rehab, was born on 12 January 1990. Two sons, Mohammed Saad Mahmood and Abdul Basil Mahmood, were born on 9 March 1991 and 9 March 1992 respectively.

3. The family spent the early part of their life together living in Pakistan. In or about 1996, or possibly 1997, the Appellant travelled to Saudi Arabia to take employment. Thereafter he remained working in Saudi Arabia until he came to the United Kingdom in 2011. He would return on an annual basis to Pakistan for a period of a month to spend time with his family. This situation continued until 2004 when the Appellant's family members came to the United Kingdom. As noted above, the Appellant's wife is a British citizen; it appears that each of his children have also acquired British citizenship. Therefore the Appellant's wife and children were not subject to immigration control in the UK.
4. Since 2004 the Appellant's wife and children have resided in the United Kingdom, with the Appellant sending support from his employment in Saudi Arabia. It is also said that contact and family life were maintained through telephone calls and other communications.
5. The Appellant entered the United Kingdom on 21 June 2011 pursuant to entry clearance as a visitor, which in the ordinary course of events would have conferred six months' leave to enter.
6. On 3 October 2011 the Appellant made an application for leave to remain in the United Kingdom based on family life. The application was refused on 8 December 2011. The Appellant remained in the United Kingdom, and has done since that date without any lawful basis by way of grant of leave. It has been said that he made a request for reconsideration of the decision of 8 December 2011 but never received a response: however I am unable to identify any evidence on file to suggest that such a request for reconsideration was ever chased up. At best it is apparent that the Appellant essentially acquiesced in the absence of any response, rather than seeking with anything approaching due diligence to regularise his immigration status.
7. In April 2016 the Appellant was served with a Notice of Liability to Removal. At this point he submitted a Statement of Additional Grounds. That led in due course to the decision of 22 June 2016, which is the subject of these proceedings.
8. The Appellant appealed against the refusal of leave to remain to the IAC.
9. The appeal was dismissed by First-tier Tribunal Judge Cameron for reasons set out in his Decision and Reasons.
10. The Appellant sought permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Hollingworth on 12 April 2018.

11. Having had the benefit of the submissions from both representatives, I have reached the conclusion that the First-tier Tribunal Judge has materially erred in law in his approach to the issue of 'family life' as between the Appellant and his now adult children.
12. The Decision contains a sub-heading 'Findings of Fact and Credibility' - although the following paragraphs (paragraph 28 *et seq.*) in the main part constitute a recitation of the evidence rather than statements of findings. The Judge has set out in some detail the evidence that was before him. Some of the evidence before the Judge related to aspects of the claimed emotional dependency and ties as between the Appellant and his family, including the adult children.
13. The evidence was given in the context of a family reuniting in 2011 - and living in the same household ever since - following the Appellant's significant absences from the family home since the children were very young: the oldest child would only have been 6 or 7 years old when the Appellant went to work in Saudi Arabia. The Judge records the evidence of the Appellant's wife to the effect "*that they are all physically, mentally and emotionally dependent and attached with the Appellant and they have a close-knit relationship*" (paragraph 32). Similarly the children - each of whom gave evidence before the First-tier Tribunal - made observations as to the nature of their relationships with their father: for example Ms Rehab Mahmood said that having her father here made a big difference as it was really important to have a full family and his being here completed the family (paragraph 54).
14. There was also evidence before the First-tier Tribunal of the Appellant's now financial dependency upon his family members, in particular on his two adult sons. In this regard the Judge found: "*Since the Appellant has been in this country all of his children have been adults and although he supported them during their initial years it is clear from the evidence that they now support him.*" (paragraph 62).
15. The Judge's finding in respect of family life as between the Appellant and the adult children is in the following terms:

*"The children were adults when the Appellant came to this country and although he had been supporting them they are now clearly supporting their own parents and are in work. I am not satisfied that the evidence before me indicates that the relationship between the Appellant and his children shows more than a normal dependency between a parent and their adult children and I am not therefore satisfied that family life is established which would engage Article 8."* (paragraph 73)

16. I identify, with the assistance of Mr Pennington-Benton - and to some extent with the acknowledgement of Mr Duffy - two errors in this regard.
17. The first is a misdirection of law. Mr Pennington-Benton submits that the test in respect of family life as between a parent and adult children requires a focus on whether or not there are more than normal emotional ties, and that to that extent the Judge misdirected himself by having regard to whether or not there was more than a normal 'dependency'. My attention has been directed to the case of **Kugathas [2003] EWCA Civ 31** at paragraph 17 per Lord Justice Sedley, and paragraph 25 per Lady Justice Arden. I have also been directed to the words of Lord Justice Sales (giving the decision of the Court), commenting on **Kugathas**, in **Kopoi [2017] EWCA Civ 1511**, in particular: "*Family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties, such as ties of dependency*" (paragraph 18). It may be seen from that citation that there is a distinction between the notion of emotional ties and dependency. The appropriate test is whether something more exists than normal emotional ties; in evaluating whether that be the case the ties of dependency may be relevant; 'ties of dependency' may assist in meeting the test, but are not a requirement of the test. Judge Cameron, at paragraph 73, has focused exclusively on 'dependency' - and seemingly financial dependency - to the exclusion of making a finding on emotional ties. I am satisfied that this constitutes a misdirection of law inconsistent with the guidance of the Court of Appeal in **Kugathas**, and upheld in **Kopoi**.
18. I am also persuaded that there is an absence of reasoning at paragraph 73 in support of the Judge's conclusion.
19. The Judge, as I have indicated, has recited in some detail the evidence that was before him, and at paragraph 73 has stated a conclusion. However, the *reasons* for that conclusion are not evident at paragraph 73 or anywhere else in the Decision. In this context Mr Duffy accepted that a reader of the Decision was effectively left to infer matters from the Decision in respect of possible reasons, there being no overt reasons on the face of the Decision. In my judgment, that is not adequate.
20. I conclude accordingly that the finding that there was no family life as between the Appellant and his adult children was reached pursuant to a misdirection of law, and was in any event otherwise not adequately reasoned in such a way that the reader of the decision would be able to discern the basis of the Judge's conclusion.
21. I note that the Judge went on to give an alternative consideration to the issue of family life. The Judge stated:

*"Even if I were incorrect in relation to this finding family life between the Appellant and his minor children had been exercised by way of regular visits and contact and again*

*given that the Appellant has been in this country as a visitor and then overstayed, there is no reason why that family life cannot be continued if he were returned to Pakistan in the same way it had been exercised for many years prior to his coming to this country.”* (paragraph 74).

22. Inherent in this ‘in the alternative’ reasoning is, seemingly, a recognition that there would be an interference with the nature and quality of family life currently enjoyed in the United Kingdom were it to be ‘exchanged’ for the more distant style of family life that had prevailed before the Appellant came to the UK. However, the Judge fails to consider the further stages of the Razgar test - in particular proportionality. Mr Duffy acknowledges that there is no consideration anywhere else in the Decision to the proportionality of any interference in the family life a between the Appellant and his children.
23. In such circumstances the Judge’s ‘in the alternative’ offering at paragraph 74 does not save this Decision.
24. Accordingly I have reached the conclusion that there is a material error of law such that the decision in the appeal is to be set aside.
25. Whilst, as I have noted above, there is a detailed and lengthy recitation of evidence in the Decision of the First-tier Tribunal, there is little by way of findings of fact.
26. The remaking of the decision will require careful consideration of all of the evidence, in particular in relation to emotional dependency (which may encompass consideration of financial dependency), in order properly to evaluate the nature and quality of family life as between the Appellant, his wife and their now adult children. It will also require careful consideration of the public interest considerations - including the public interest in maintaining effective immigration control which ordinarily is done by a fair and consistent application of the Immigration Rules.
27. In this latter context I observe that it seems that to a considerable extent the Appellant seeks an accommodation outside the Rules in consequence of family life and/or private life that he has established since entering the United Kingdom in the capacity of a visitor - and remaining notwithstanding an adverse decision on his application for further leave to remain. It does not appear to be suggested that he could qualify for entry clearance or leave to remain as a spouse, or as a parent. Necessarily, consideration of section 117(3) and (4) of the 2002 Act will be required also. Further, the extent to which the relatively recent reunification of the family - and the significance accorded to that by the Appellant and his family members who have ‘missed out’ on their mutual companionship - should avail the Appellant in

circumstances where the past separation was ultimately a matter of choice on his part, will require very careful consideration and balance.

28. In the circumstances it seems to me appropriate that the decision in the appeal should be remade after a new hearing before the First-tier Tribunal.
29. I do not propose to suggest anything other than standard Directions be issued in the appeal. It is clear enough from discussion with Mr Pennington-Benton that he is alert to the necessity to file any further evidence that the Appellant may wish to rely upon in the usual way in good time before any resumed hearing.

### **Notice of Decision**

30. The decision of the First-tier Tribunal contained material errors of law and is set aside.
31. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Cameron, with all issue at large.
32. No anonymity direction is sought or made.

*The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.*

Signed:

Date: 29 July 2018

**Deputy Upper Tribunal Judge I A Lewis**