Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13504/2018

THE IMMIGRATION ACTS

Decided without a hearing under rule 34 (P)

Decision & Reasons Promulgated On 3 September 2020

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

R R
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involved the assessment child welfare issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

DECISION AND REASONS

1. The appellant, his parents and younger sibling appealed the respondent's decision dated 12 June 2018 to refuse a human rights claim. First-tier

Tribunal Judge Obhi dismissed the linked appeals in a decision promulgated on 04 January 2019.

2. Upper Tribunal Judge McWilliam found that the First-tier Tribunal decision involved the making of an error of law in a decision promulgated on 17 April 2019. She went on to remake the decision and allowed the appeals of the appellant's parents and his sibling. She dismissed the appellant's appeal at [28] of the decision. In doing so, she noted that the appellant was under 18 years old at the date of the application for leave to remain on 29 March 2017. The respondent accepted in the decision letter that the appellant had been resident in the UK for a period of 7 years and 2 months at the date of the application. The judge found that his period of residence was "significant", but she concluded that it would be proportionate to expect the appellant to return to Mauritius and apply for entry clearance as a student now that he was over 18 years old.

3. By agreement, the RR's appeal was remitted from the Court of Appeal. The Statement of Reasons indicates that the parties agreed that Upper Tribunal Judge McWilliam erred in failing to give sufficient weight to the ties that the appellant might have established following 7 years' residence accrued as a child and failed to give adequate consideration to the principles outlined in *MA (Pakistan)* and *Kugathas*. The terms of the agreement in the Court of Appeal appear to indicate that the respondent accepted that weight should have been given to the ties that the appellant is likely to have established here as a child, which are only likely to have strengthened in the three years that had passed since he reached his majority.

4. In light of the Covid-19 pandemic the Upper Tribunal reviewed the case and issued directions to the parties on 14 May 2020. In those directions I gave the following indication:

> "… the judge failed to consider whether, at the date of the application (the relevant date for the purpose of the immigration rules), the appellant met the requirements of paragraph 276ADE(1)(iv) given that the only reason given by the Secretary of State for refusing the application was that it was said to be reasonable to expect the child (as he then was) to leave the UK. The fact that Upper Tribunal Judge McWilliam concluded that it was unreasonable to expect his sibling, who was still a child, to leave is relevant to whether, <u>at the date of the application</u>, it would have been reasonable to expect the appellant to do so."

5. The appellant's representative responded to the directions with written submissions and a consolidated bundle of evidence. The respondent was operating under restricted circumstances due to the pandemic and did not reply to the directions until much later, and only after they had been sent to her again. Having considered the indication given by the Upper Tribunal and the written arguments put forward on behalf of the appellant the respondent made the following concession in correspondence sent on 26 August 2020.

> "The Secretary of State writes further to the correspondence received from Graham Tomlinson dated 18/8/20 and the Directions of UTJ Canavan of 14/5/20.
>
> In the light of: the terms of remittal by consent from the Court of Appeal, the fact that the Appellant was a qualifying child at the date of application, the fact that UTJ McWilliam allowed the linked appeals of the Appellant's younger sibling and parents under Article 8 (@27) and upon the Secretary of State considering the Appellant's bundle, it is conceded in the specific circumstances of this case that the Appellant's removal would amount to a disproportionate interference with his Article 8 rights.
>
> For these reasons the Secretary of State respectfully invites the Upper Tribunal to allow the appeal of RR under Article 8."

6. I am satisfied that this concession was a proper one on behalf of the respondent. In light of the concession it is not necessary to give detailed reasons for this decision. At the date of the application for leave to remain on human rights grounds the appellant was a 'qualifying child' who had been resident in the UK for a continuous period of 7 years. The Upper Tribunal having found that it would be unreasonable to expect his young sibling to leave the UK, it follows that it was likely to be unreasonable to expect the appellant to do so at the date of the application. The fact that he subsequently reached his majority did not change the position in relation to Article 8, which is based on an assessment of the strength of a person's ties to the UK. Weight should be given to the ties established by the appellant during the seven-year period in which he remained as a child. The appellant has been resident in the UK since he was 10 years old and for a total period of 10 years.

7. I am satisfied that the appellant is likely to have established strong private life ties to the UK during an important formative period of his life and that his removal in consequence of the decision would interfere with his right to private life in a sufficiently grave way to engage the operation of Article 8(1) of the European Convention. The respondent accepts that the appellant's removal would not strike a fair balance and would be disproportionate for the purpose of Article 8(2).

8. I conclude that removal of the appellant would be unlawful under section 6 of the Human Rights 1998.

DECISION

The appeal is ALLOWED on human rights grounds

Signed M. Canavan Date 27 August 2020
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email