



IAC-PE-AW-V1

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

Appeal Number: IA/02954/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2014**

**Decision & Reasons Promulgated
On 6 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GIBB

Between

**YANISH GOPEE
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Counsel, instructed by Malik Law Chambers
Solicitors (Bethnal Green Road)

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant's appeal was dismissed by First-tier Tribunal Judge J J Maxwell, following a hearing at Hatton Cross in July 2014. The appeals of his parents, and his younger brother, however, which were considered in a joint hearing and a joint

determination, were allowed on Article 8 grounds. In essence the reasoning was that the appellant's younger brother was soon to take his GCSE examinations, and it was considered disproportionate to remove him before these were taken. He and his parents should therefore be permitted to remain long enough for these to be completed, but the appellant himself could return to Mauritius, because he had reached a break in his studies, having obtained his law degree and completed the legal practice course.

2. The appellant was granted permission to appeal by First-tier Tribunal Judge Grant-Hutchison, on 11 September 2014. The grounds for seeking permission to appeal had been concerned (1) with the assessment of the appellant having "no ties" to his country of origin; and (2) the approach to Article 8.
3. There was no cross appeal by the Secretary of State in relation to the appeals being allowed for the appellant's younger brother and his parents. This was confirmed by Mr Walker at the hearing before me.
4. At the start of the hearing Mr Karim, for the appellant, indicated that he was no longer pursuing the first ground, in relation to "no ties" to Mauritius. He applied to advance two new grounds, in addition to the remaining ground about the legal framework for Article 8. The first of these was that there had been no consideration given to the public benefit of the appellant's presence in view of his voluntary work and academic achievements, with reference to **UE (Nigeria) & Others v SSHD [2010] EWCA Civ 975**. The second additional ground was that there had been a lack of consideration of the appellant's relationship with his immediate family, either in terms of family life, or as an aspect of private life.
5. There was no objection by Mr Walker to the proposed amendments to the grounds, and I allowed both to be argued. I indicated that my preliminary view was that the strongest arguable point concerned the judge's approach to the appellant's relationship with his immediate family.
6. Mr Karim's submissions on this ground can be summarised as follows. The appellant's relationship with his younger sibling had not been mentioned at all in the consideration of the appellant's relationships with his family members at paragraph 24 of the determination. Paragraphs 50 to 62 of the Upper Tribunal decision in **Ghising (family life - adults - Gurkha policy) [2012] UKUT 00160 (IAC)** made it clear that a strict reading of **Kugathas v SSHD [2003] EWCA Civ 31** was incorrect. The approach to a consideration of whether there was family life between the appellant and his parents, and his younger sibling, had to take into account that the appellant had never established any independent life outside his family. It was noted, at paragraph 59 of **Ghising**, that the Court of Appeal had considered similar facts in **RP (Zimbabwe) and Another v SSHD [2008] EWCA Civ 825**. Sedley LJ had commented that it would be unreal to dispute that a 23 year old appellant enjoyed family life with her parents when she had lived continuously with her parents and siblings for all of her life. This is factually similar to the current case. The judge as a

specialist Tribunal should have been aware of **Ghising**, even if it was not drawn to his attention by the representatives. In addition the judge, at paragraph 24 of the determination, had not gone on to give any consideration to the appellant's relationships with his immediate family as an aspect of his private life ties to the UK.

7. Mr Walker, in response, noted that the **Kugathas** case was cited at paragraph 23 of the judge's determination. He agreed, however, that **Ghising** was a well-known case of which the parties, and the judge, would have been aware. He agreed, on behalf of the Secretary of State, that the judge's consideration of the appellant's relationship with his family had involved an error on a point of law in the narrow application of **Kugathas**, and the lack of consideration of the relationships within private life.
8. In view of this agreement, which appeared to me to be sensible and properly reached, I indicated that I found the ground about the approach to the appellant's relationship with his immediate family members to be made out. I therefore accept that the judge erred in law, in a manner material to the outcome, both in applying a narrow approach to **Kugathas**, which was held by **Ghising** to be legally erroneous, and also in not considering the appellant's relationship with his parents, his relationship with his younger sibling, and the impact on all family members of the separation, as an aspect of either the appellant's family or private life. The decision therefore falls to be set aside.
9. I indicated at the hearing that I proposed remaking the decision for the appellant to be in line with the rest of his family. I invited submissions. Both Mr Walker and Mr Karim had no objection, and did not wish to make any further submissions.
10. Mr Karim made detailed submissions on the approach to Article 8. These were based on paragraphs 128 to 130 of **MM (Lebanon) v SSHD [2014] EWCA Civ 985**, on the basis that these had overturned the arguability threshold approach in **Gulshan** and other cases. He also made submissions about the public benefit point, on the basis that this had been held, in **UE (Nigeria)** to be a matter capable of being a relevant consideration in the proportionality assessment. Mr Karim agreed, however, that there was no need for me to consider the other points given the proposed remaking in line with the rest of the family.
11. Neither side made any reference to a fee award. The First-tier Judge made fee awards for three of the appellants, but not for this appellant. Having decided to remake the appeal by allowing it I have decided to make a whole fee award for this appellant, in line with the rest of the family. The outcome of the remaking does not depend on matters not raised with the applications. Neither side suggested that there was any need for anonymity, and I make no such order.

Notice of Decision

The judge's decision dismissing the appellant's appeal involved an error on a point of law, and that decision is set aside. The decision is remade as follows.

The appeal is allowed on Article 8 grounds on the same basis and in line with the appellant's parents and brother.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Gibb

23 October 2014

TO THE RESPONDENT

FEE AWARD

Having decided to remake the appeal by allowing it I have decided to make a whole fee award for this appellant, in the sum of £140.

Signed

Date

Deputy Upper Tribunal Judge Gibb

23 October 2014