



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/31813/2013

THE IMMIGRATION ACTS

Heard at Field House
On 6 June 2014

Determination Promulgated
On 30 June 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT Appellant

and

MR ABDUL LATEEF TOLUWANI BELLO
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr E Tufan
For the Respondent: Mr J René of counsel

DETERMINATION AND REASONS

1. For ease of reference purposes the parties are referred to as they were before the First-tier Tribunal so that Mr Bello is the appellant and the Secretary of State for the Home Department is the respondent.

2. The appellant is a citizen of Nigeria who was born on 25 May 1989. On 8 July 2013 a decision was made to refuse him leave to remain on the basis that such removal would not place the United Kingdom in breach of its obligations under the Human Rights Act 1998. Directions were also given under Section 10 of the Immigration and Asylum Act 1999 for his removal from the United Kingdom.
3. The appellant appealed that decision and at a hearing before First-tier Tribunal Judge Wiseman the appeal was allowed under Article 8 ECHR.
4. The respondent sought permission to appeal on the basis that the judge had not considered the guidance in the case of **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)** namely that "if there are good grounds for granting leave to remain outside the Immigration Rules it is necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules". It was submitted in the grounds that the judge had not considered the correct approach in departing from the Rules and permission to appeal was granted on that basis.
5. Mr Tufan, representing the respondent, submitted before me that the judge did not consider **Gulshan** and other recent cases on Article 8 to show that there would need to be exceptional compassionate circumstances if the appellant was to succeed under Article 8. The judge simply went straight to the proportionality assessment. This was a "near miss" case and there are no particularly compelling circumstances.
6. Mr René submitted that the respondent did not challenge the judge's findings, but only the approach to Article 8 in general. Mr René then referred me to **Huang v Secretary of State for the Home Department [2007] UKHL 11** which sets out what the appellant and the Appellate Authorities have to do when considering Article 8. He submitted further that even the latest cases do not alter the approach that should be taken. The refusal letter does not deal with private and family life. The First-tier Tribunal Judge took into account in paragraphs 56 to 65 of the determination all the matters that were required of him even though he did not mention expressly the case of **Gulshan**. Mr René's submission was that there had been no material errors made in the determination.

My Conclusions

7. This is a very carefully constructed and worded determination. The judge has given correct self-directions in paragraphs 50 and 55 referring to his consideration of the facts in the context of Appendix FM and then on a stand alone or "exceptional circumstances" basis, if necessary. As Mr René points out credibility was not in issue and there is no challenge to the findings of the judge in general terms. The judge took into account that the appellant comes very close to being "aged 18 years or above and under 25 years and has spent at least half of his life residing continuously in the United Kingdom" calculating that the appellant falls short of that requirement probably by less than a year. Although that is suggestive of a near miss argument the judge referred to "near miss" arguments and directed himself appropriately in paragraph 62 of the determination. Careful reading of the determination shows that

as the judge put it the appellant has become “embedded” in the household of his sister and her child. He has lived with that family group for eleven and a half years and the relationships are clearly far more important than “normal emotional ties with an adult”. Not only do they significantly involve a child who has lived with the appellant all her life but the sister has been a financial supporter of the appellant for the whole of his time here. It would be significant enough if it was only in relation to the normal costs of living but in fact it has involved university and other fees. By reason of the difference in their ages his sister has clearly acted effectively as a mother figure for him, particularly when he was younger.

8. It is also apparent from reading the determination that the judge concluded that this was one of those exceptional cases that led him to allow the appeal under Article 8. He has fully justified his decision and although the respondent disagrees with that conclusion and the reasoning for coming to it this I find is little more than argument. The determination discloses no error of law, let alone a material one.

Decision

9. For the above reasons the decision of the First-tier Tribunal stands.
10. There has been no anonymity direction thus far, none was sought, and in the circumstances of this case I see no need for one to be made now.

Signed

Date

Upper Tribunal Judge Pinkerton