



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

Appeal Number: IA/38011/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 26 June 2014**

**Determination
Promulgated
On 07 July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR JEAN JUSTIN SERGE YAO

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Mr P Collins, Counsel instructed by David A Grand

DECISION AND REASONS

1. The respondent (whom I shall refer to as the appellant as he was before the First-tier Tribunal), Jean Justin Serge Yao, is a citizen of the Ivory Coast and his date of birth is 12 December 1992. He made an application to remain in the UK on the basis of his private life. This application was

refused by the Secretary of State in a decision of 6 September 2013 pursuant to paragraph 276ADE of the Immigration Rules.

2. The appellant appealed against the decision and his appeal was allowed by Judge of the First-tier Tribunal McIntosh in a decision which was promulgated on 21 March 2014 following a hearing on 14 February 2014.
3. The application was made on 20 November 2012. The Secretary of State was granted leave to appeal by Judge of the First-tier Tribunal Foudy in a decision of 6 May 2014. Thus the matter came before me.

The Background

4. The appellant and his younger sister Akissi Patricia Yao came to the UK on 21 October 2008 in order to join their mother Julienne Yao who had come here on 26 October 2001 in the capacity as a member of staff of the Embassy of the Ivory Coast and was thus at the time exempt from immigration control. The appellant was at that time aged 15. On 19 November 2012 the appellant, his mother and sister all made applications for leave to remain. The appellant's mother's application was based on her ten years' residence in the UK and his sister's application was based on her being a minor dependant of her mother. The appellant was aged 19 at the date of the application. His mother's application and that of his sister were successful but the appellant's application was refused.
5. The appellant lives with his mother, sister and stepfather Mr Gableo Theodore Guedegbe. The family have lived together since 2008. The appellant's stepfather Mr Guedegbe is a British citizen.

The Decision of the First-tier Tribunal

6. The First-tier Tribunal accepted the evidence of the appellant, his mother, his sister and his stepfather. They were all found to be credible and the Judge found that although the appellant could not meet the Immigration Rules his appeal should be allowed under Article 8.

The Grounds Seeking Leave to Appeal and Oral Submissions

7. The grounds seeking leave to appeal argue that the Judge made a material misdirection in the Article 8 assessment because he failed to follow the guidance in **Gulshan [2013] UKUT 00640 (IAC)**. The Judge did not provide reasons why the appellant's circumstances were compelling or exceptional. The Article 8 assessment is challenged on the basis that the decision that there is family life between the appellant and his family was not in accordance with the judgment in **Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31**.

8. Mr Whitwell made oral submissions and he made an application in order to amend the grounds seeking leave to appeal in order to challenge the balancing exercise that was conducted by the Judge. I refused the application, given that there had been ample opportunity for such an application to have been made before the date of the hearing.
9. The appellant cannot meet the Immigration Rules and in these circumstances the First-tier Tribunal should have gone on to consider the guidance in **Gulshan (Article 8 - new Rules - correct approach [2013] UKUT 640 (IAC)**. However, this does not amount to a material error of law. In this case there is no specific challenge in the grounds seeking leave to appeal to the proportionality balancing act. What is challenged is the Judge's finding that there is family life with which removal would interfere (Article 8(1) of the 1950 Convention on Human Rights).
10. The Judge did not refer to the case of **Kugathas v SSHD [2003] EWCA Civ 31** or to any other case law relating to relationships between adult children and their parents. However, I have considered the case of **Kugathas** in the context of the more recent case of **Ghising (family life- adults - Gurkha policy) Nepal [2013] UKUT 160 (IAC)**. The Judge accepted the evidence of the appellant and family members that they lived together as a family unit. It was accepted that the appellant wishes to continue with his education in the UK. He wishes to complete a degree course and significantly he is financially and emotionally dependent on his family. He is a young man of 21. He has always lived with his sister and since 2008 the family have lived together as a unit and the appellant has a strong bond with his family.
11. It was open to the Judge to find that the appellant has a family life with adult family members that would engage Article 8(1) of the 1950 Convention. This finding is lawful and sustainable. The Judge erred because he did not follow **Gulshan**, but (having made a lawful and sustainable finding that Article 8 (1) was engaged) the grounds do not disclose that the ultimate balancing exercise under Article 8 was flawed and in these circumstances the error is not material.
12. The decision to allow the appeal stands.

Signed Joanna McWilliam

Date 6 July 2014

Deputy Upper Tribunal Judge McWilliam