Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/04526/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 June 2015	**On 7 August 2015**
Determination given 23 June 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR ABDOUKARIM BAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, Counsel instructed by Queens Park Solicitors
For the Respondent: Mr T Wilding, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Gambia, date of birth 14 November 1986, appealed against the Respondent's decision, dated 27 December 2013, to refuse a residence permit based upon the Appellant's claim to be an extended family member of an EEA national under Regulation 8 of the Immigration (EEA) Regulations 2006. The appeal came before First-tier Tribunal Judge Zahed (the judge), who heard the case on 30 September

2014 and sent for e-promulgation his decision on 20 October 2014. For reasons that have not been enquired into the decision was promulgated by the administration on 15 January 2015.

2. For the avoidance of doubt there was no material delay between the hearing and the judge's signing off of his decision.

3. The hearing was conducted at Hatton Cross hearing centre when at the material time the Appellant and Sponsor were residing in the Leeds area. The notice of hearing was given to Queens Park Solicitors, a London-based firm. It does not appear from the case file that any steps were taken, given the claimed ill health of the Sponsor, to have the hearing conducted at the Leeds/Bradford hearing centre, which has full access facilities for the disabled, nor was a postponement sought of the hearing in advance. Nor on the day did Counsel for the Appellant seek an adjournment on the basis of the Sponsor's ill health rendered her unfit to attend court to give evidence. Further, even if some application had been made, the case file does not show that any steps in advance were taken by the Appellant's representatives to have a video link organised from Leeds, where the Sponsor resided, to the hearing centre at Hatton Cross. In all likelihood such an application would have been met with a transfer of the case to the more convenient hearing centre.

4. Before the judge there was a letter from a Dr Haroon Rashid dated 26 September 2014. There was a letter of 15 August 2014 written by a Dr E Storr of the Allerton Medical Centre, the same centre at which Dr Rashid works. There may be, but it does not appear to be the case, some correspondence from a consultant orthopaedic surgeon, Mr Aderinto MB, ChB, MSc, MD, FRCS. This correspondence in totality does not indicate anything other than the fact that unfortunately the Sponsor has a particular problem with lumbar back pain and it seemed from time to time has had some loss of mobility. Other than that there was nothing to suggest that she was unfit either to make a statement or unfit to be able to attend a hearing centre to give evidence.

5. With such limited evidence before him, the judge, was confronted simply by the evidence from the Sponsor in a sponsorship statement and an unsigned statement of which there was nothing to indicate it was ever verified with the Sponsor as being factually correct. The unsigned statement was undated. The judge therefore had to do the best he could with the material before him.

6. The principal and first complaint was that there was a procedural error of law in the judge proceeding with the hearing when the Sponsor being unable to attend. I do not accept that the factual position has been established to show that the Sponsor was unfit to attend a hearing even one in Leeds. In those circumstances given the absence of steps to seek an adjournment nor indeed at the hearing I see no procedural unfairness established through the absence of the Sponsor or proper reasons for the same. The judge made note of the evidence that he was taken to concerning the letter from Dr Haroon (paragraph 6 of the decision) and he was therefore entitled to take the point which was entirely a matter for him of the weight to be attached to that information. Plainly if the Sponsor's statement had been signed and its contents confirmed as true and accurate some weight could be given to that statement even if it was untested. However, the judge was put in the position of doing the best he could on the material as provided, in the way it was provided, and I see no sustainable criticism of him, demonstrating any procedural error giving rise to unfairness or a lack of natural justice. Accordingly the judge's decision to proceed was entirely one for him and does not disclose any arguable error of law.

7. Secondly, it was said that the judge erred in law because he gave no weight to the witness statement of the Sponsor.

8. In this respect I find that as a matter of law it was for the judge to decide what weight to give that matter. He was entitled to read the unsigned and undated statement closely and find such little weight could be attached to

it, given the broad lack of particulars given by the Sponsor as to the extent of her claimed sponsorship and when it occurred. In particular it is noteworthy that in the statement the evidence was essentially a bare assertion of money being sent in some unspecified amounts at some unspecified times to support the Appellant's upkeep and school fees: This at the same time when similarly the Appellant was applying to come to the United Kingdom reliant upon the financial support of his father in the Gambia. How it should come to pass that the Appellant should be receiving money, as is now said, in the way he was were issues, had the judge put his mind to it, which would have raised serious doubts about the reliability of the evidence in any event.

9. I only touch upon this matter because essentially Mr Jafar argued that there was evidence of weight and substance which simply could not be dismissed as lacking weight, an argument with which I disagree. Ultimately it seemed to me that it was entirely a matter for the judge to decide and he made no error of law in reaching the view he did on the material. The practical difficulty for the Appellant was that the judge was not satisfied nor did the evidence go to show that the Appellant and Sponsor were qualifying 'family members': Ultimately that matter was essentially the end of the case. I find the judge made no error of law in addressing that issue on the evidence before him.

10. In those circumstances the only point that was not particularly pursued was the Article 8 issue which is raised in the grounds of appeal to the First-tier Tribunal dated 1 September 2014. The near entirety of the arguments related to Regulation 8 of the 2006 EEA Regulations. However, the grounds did state, under heading Article 8 ECHR family life proportionately, the Appellant's appeal ought to be allowed as it fell within the realms of Article 8 ECHR for private and family life which should not be disproportionately interfered with. The Appellant has established family life and private life with his Sponsor which should be protected and any decision to separate them would amount to a disproportionate interference of the same.

11. It is clear from the evidence that was advanced that essentially what was being relied upon, in the main if not entirely, was the relationship between the Sponsor and the Appellant as evidenced by the statement of the Appellant dated 30 September 2014.

12. However, it is extremely difficult to see, even if this was a matter which the judge should have considered, whether it could make any difference to the outcome, not least because the evidence did not show any element of real dependency upon the Sponsor. Mr Jafar essentially transferred the weight on that issue to the role the Appellant could help the Sponsor with her children. This was barely a matter touched upon in the statement of the Sponsor and barely touched upon at all in the statement of the Appellant that was before the judge. Therefore it seems to me even if the judge was wrong in failing to consider Article 8 no similar Tribunal applying their minds to the evidence before it would have reached any different view, namely the claim under Article 8 ECHR was not made out on the evidence before it.

13. Accordingly, if there is an error of law by the judge in failing to deal with Article 8 issues it made no difference to the outcome. It may be that EEA cases do not attract a consideration of Article 8 even though as was pointed out no removal directions are set, no intention to remove is manifest in any further actions by the Secretary of State and no further steps had been taken to effect removal. If there were any merit in the matter, as a fact the Appellant did not establish that his Article 8(1) rights were engaged nor that the effect of his removal in due course would give rise to a demonstrable breach even to that low level of significance identified in AG (Eritrea). Similarly Mr Jafar does not point to nor did the grounds ever point to the issue of proportionality in its wider context looking at Article 8 ECHR outside of the Rules.

14. For those reasons therefore I am satisfied that the Original Tribunal made no material error of law. The Original Tribunal decision stands.

NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction was previously made and none is sought.

Signed Date 2 August 2015
Deputy Upper Tribunal Judge Davey