IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: VA/02502/2014

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham	**Decision & Reasons Promulgated**
On 3rd February 2016	**On 24th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

DR CHARLES BEKONI RUSSEL PILLI
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - NAIROBI

Respondent

Representation:
For the Appellant: Mr A Pipe, of Counsel instructed by Wornham & Co Solicitors
For the Respondent: Mrs R Petersen, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge James of the First-tier Tribunal (the FTT) promulgated on 29th May 2015.

2. The Appellant is a male citizen of Tanzania born 17th October 1965 who applied for entry clearance to the United Kingdom as a visitor. The

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Appellant wished to visit his two adult sons who were studying in the United Kingdom, and also to attend business meetings.

3. The application was refused on 15th April 2014. The Respondent noted that the Appellant had previously visited the United Kingdom, and was satisfied that he met the requirements of paragraph 41 of the Immigration Rules.

4. The application was however refused with reference to paragraph 320(7A) of the Immigration Rules as it was contended that the Appellant had made false representations in his application form. Specifically the Appellant had denied having any criminal convictions whereas he had in fact a conviction for driving a motor vehicle with excess alcohol in the United Kingdom on 17th November 2011.

5. The Appellant appealed, and his appeal was heard by the FTT on 18th May 2015. The FTT heard evidence from David Woodhead, a business associate of the Appellant, and Bryan Russell, one of the Appellant's two sons. The FTT recognised that the Appellant had only a limited right of appeal and that he relied upon Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). The FTT concluded that Article 8 was not engaged either in relation to private or family life and therefore the appeal was dismissed.

6. The Appellant applied for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT had materially erred in law by considering the Appellant's private and family life separately, and had erred in adopting an unduly restrictive approach to private life. The FTT ignored the fact that the Appellant resided in the United Kingdom between 2001 and 2011.

7. It was contended that the FTT had erred by finding that the Appellant did not have any significant family life in the United Kingdom and had failed to properly assess questions 1 and 2 of Razgar [2004] UKHL 27. It was contended that the FTT should have assessed whether there was family life between the Appellant and his sons, and it was further contended that the judge had made perfunctory and inadequate findings.

8. Permission to appeal was refused by Judge Holmes of the FTT, and the application for permission to appeal was thereafter renewed to the Upper Tribunal, and permission was granted by Upper Tribunal Judge Reeds in the following terms;

> "Whilst I do not find merit in the grounds where it is asserted that the judge failed to consider family and private life as a cumulative whole, it is arguable that the judge failed to have regard to the period between 2001 and 2011 spent in the UK and limited his consideration to circumstances since the conviction and no findings of fact are made in this respect. Furthermore, whilst the judge gave consideration to family life at (35) there were no findings of fact made as to whether there was any dependency between the adult sons and their father on the basis of the evidence provided nor any findings made as to the genuineness of the visit and intention (see Kaur (visit visas: Article 8) [2015] UKUT 00487). I therefore grant permission."

9. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 contending, in summary, the FTT had not erred in law. It was contended that the FTT directed itself appropriately, and the grounds amounted to a disagreement with findings made.

10. Directions were issued making provision for there to a hearing before the Upper Tribunal to decide whether the FTT decision should be set aside.

Oral Submissions

11. Mr Pipe relied and expanded upon the grounds contained within the application for permission to appeal. Mr Pipe accepted that before the FTT, there was no evidence of dependency between the Appellant and his two sons. Mr Pipe submitted that in considering private life the FTT had disregarded the period between 2001 and 2011 in which the Appellant had resided in the United Kingdom, and therefore the FTT should have found that Article 8 was engaged, and then gone on to consider proportionality.

12. Mrs Petersen submitted that the FTT had provided brief but adequate reasons for the findings made. It was submitted that the FTT was aware that the Appellant had previously spent time in the United Kingdom. The task of the FTT was to consider whether there was existing private life, not whether the Appellant used to have a private life in the United Kingdom between 2001 and 2011.

13. It was submitted that the FTT had been entitled to find that Article 8 was not engaged either in relation to private or family life.

14. By way of response Mr Pipe maintained the FTT had only considered the Appellant's private life in relation to the fact that he had visited the United Kingdom twice since his conviction on 17th November 2011, and was wrong to disregard the period that the Appellant spent in this country between 2001 and 2011.

15. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

16. In my view the FTT did not materially err in law for the following reasons.

17. The FTT took into account all the evidence submitted on behalf of the Appellant. The oral evidence of the two witnesses is set out at paragraphs 8 – 20. At paragraphs 21 – 23 the FTT summarises the two witness statements submitted by the Appellant. The FTT at paragraph 24 confirmed that the contents of the Appellant's bundle had been considered. The FTT set out the submissions made by both parties at paragraphs 25 – 31.

18. The FTT followed the correct legal approach when deciding appeals against refusal of entry clearance, based upon Article 8 of the 1950 Convention. The FTT referred to Adjei [2015] UKUT 261 (IAC), noting that the first question to be addressed is whether Article 8 is engaged.

19. The FTT then went on to make reference to the structured approach in Razgar [2004] UKHL 27.

20. It is for an Appellant to show that he has established private and/or family life that engages Article 8. In my view the FTT erred at paragraph 7 by making reference to the Immigration Rules, and stating that the Appellant's circumstances were to be considered as at the date of the appeal hearing. The error is not however material. It is clear that the FTT did not in fact consider the Immigration Rules, but correctly concentrated on the issue as to whether Article 8 was engaged or not. Because this is an appeal against refusal of entry clearance, the circumstances appertaining at the date of refusal must be considered, that being 15th May 2014, not the circumstances at the date of hearing. I have stated that this error is not material, because it did not affect the conclusion reached. The authority for stating that human rights are to be considered at the date of refusal of entry clearance is AS (Somalia) [2009] UKHL 32.

21. In considering the Appellant's private life, the FTT noted that since his conviction on 17th November 2011, he had only returned to the United Kingdom on two occasions, visiting between 5th and 15th April 2012 and 20th to 29th December 2012. The FTT calculated that in a period of 29 months the Appellant spent no more than 21 days in this country.

22. The FTT was aware, and set out in paragraph 23, the Appellant's case that he had been in the UK for various periods between 2001 and 2011. It was not the Appellant's case that he had been resident in this country permanently for that period nor that he was settled here. The FTT accurately set out in paragraph 23 what the Appellant stated in paragraph 6 of his witness statement dated 5th November 2014, that he had been resident in the UK for various periods between 2001 and 2011 in various immigration categories.

23. The issue that the FTT had to consider was whether the Appellant had a private life that would engage Article 8 as at April 2014, when his application was refused. The FTT was entitled to conclude that the Appellant had not proved that at that time he had a private life in the UK that would engage Article 8. I do not find that the FTT disregarded the fact that the Appellant had spent time in the United Kingdom between 2001 and 2011, and in any event, I do not find that was relevant in considering the Appellant's private life in April 2014.

24. The FTT was entitled to find that Article 8 was not engaged in relation to the Appellant's private life. The FTT was entitled to find that the Appellant's wish to visit the United Kingdom to attend business meetings did not engage Article 8 on the basis of his private life.

25. In relation to family life, it was accepted by Mr Pipe that no evidence of dependency beyond normal emotional ties was presented to the FTT and the FTT was entitled to conclude that family life had not been established which engaged Article 8. In my view the FTT had in mind the correct legal principles, even though there was no specific reference to Mostafa (Article

8 in entry clearance) [2015] UKUT 00112 (IAC) and I set out below in part, at paragraph 24 of that decision;

> "We are, however, prepared to say that it will only be in very unusual circumstances that a person other than a close relative will be able to show that the refusal of entry clearance comes within the scope of Article 8(1). In practical terms this is likely to be limited to cases where the relationship is that of husband and wife or other close life partners or a parent and minor child and even then it will not necessarily be extended to cases where, for example, the proposed visit is based on a whim or will not add significantly to the time that the people involved spent together."

26. Since the FTT decision was promulgated, the Upper Tribunal has promulgated further guidance in Kaur (visit appeals; Article 8) [2015] UKUT 00487 (IAC) and I set out below the third paragraph to the headnote, which makes reference to SS (Congo) which was published prior to the FTT decision;

> "3. Unless an appellant can show that there are individual interests at stake covered by Article 8 'of a particularly pressing nature' so as to give rise to a 'strong claim that compelling circumstances may exist to justify the grant of LTE [Leave to Enter] outside the rules': (see SS (Congo) [2015] EWCA Civ 387 at [40] and [56]) he or she is exceedingly unlikely to succeed. That proposition must also hold good in visitor appeals."

27. In conclusion, the FTT in this appeal, considered all the relevant evidence, and applied the correct legal principles, and reached a conclusion open to it on the evidence, and provided adequate reasons.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and no anonymity order is made.

Signed	Date
Deputy Upper Tribunal Judge M A Hall	8th February 2016

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed	Date
Deputy Upper Tribunal Judge M A Hall	8th February 2016