Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15334/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 June 2019	**On 11 July 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

ADAM LEE GOLDMAN
(No anonymity order made)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms Chapman of Counsel
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the USA born in 1980. He appealed against a decision of the respondent made on 26 June 2018 to refuse him entry clearance as an adult dependent relative. His mother is a dual US and Irish national now living in the UK.

2. The application was refused under paragraph E-ECDR1.1 of Appendix FM of the Immigration Rules.

3. The appellant's claim is that he is living alone in exceptional circumstances. He suffers from schizophrenia, and has no one to encourage him to take his medication. He was living with a roommate but she has moved away. He has a father and step-mother in the USA but his step-mother is unwell and cannot care for him. His father provides for him financially but not emotionally or practically. He believes he should be cared for by his mother.

4. The basis of the refusal was that there was little evidence of contact between him and his mother. He was living with a woman named Tracey Accord and has done so for 10 years and she was providing him with support. Also, while it was accepted he was suffering from schizophrenia there is treatment available in his home country and he was accessing such. Further, there was no information as to how he would meet the financial requirements. Finally, there were no exceptional circumstances which would warrant the grant of leave outside the Rules.

5. He appealed.

First-tier Hearing

6. Following a hearing at Nottingham on 28 February 2019 Judge of the First-tier Tribunal Obhi dismissed the appeal.

7. She found that the appellant did not meet the requirements of the Rules. While he has some mental health difficulties he is able to manage his personal care. With some support, not necessarily from a carer but another person who is able to keep an eye on him he is able to take his medication and go to appointments. He is entitled to care in the USA and such care is available. His former roommate with whom he lived cared for him for 12 years. The care he requires could be provided for him by his father hiring a carer.

8. The judge then went on from [30] to consider the situation outside the Rules concluding that there were no exceptional circumstances.

9. The appellant sought permission to appeal which was granted on 14 May 2019.

Error of law hearing

10. At the error of law hearing before me Ms Chapman submitted that the judge's approach to the Article 8 assessment had been flawed. Although she set out the salient extract from the comments of Lord Bingham in ***Razgar v SSHD*** **[2004] UKHL 27**, she did not make the necessary findings of fact, in particular, whether the appellant and sponsor share a family life. In the absence of such a finding her consequent finding that there was insufficient evidence to show that the refusal of entry clearance

would have consequences of such gravity as to potentially engage Article 8 was undermined. In any event such finding was contrary to authority which made clear that the threshold of engagement with an interference was not high. Further, there was no consideration of the third or fourth tests namely, whether the proposed interference would be in accordance with the law and necessary in a democratic society. In addition, there was inadequate consideration of the fifth test, proportionality.

11. Ms Chapman added that the appellant had been ill-served by his previous representatives who had failed to put relevant material before the First-tier Judge. Such, if lodged for the case were it to be remitted, might result in a different decision. She submitted that the test for me in deciding if there was material error was whether the additional material would make any difference were the case to be reheard.

12. Ms Everett expressed sympathy for the appellant if he had been poorly represented previously. However, while the judge's analysis showed error in failing to adopt a structured approach to her analysis, such error was not material as on the evidence before the judge the appeal could not succeed.

Consideration

13. I agree with Ms Everett that the judge's decision shows error but that such error is not material.

14. Having found that the appellant could not satisfy the provisions of the adult dependent relative rules (which is unchallenged), she went on to note the correct approach to the analysis of private and family in a human rights appeal as set out in ***Razgar***. However, the judge did not follow that approach. The first question she should have addressed is whether there is family life between the appellant and his mother, the sponsor. The facts are not in dispute. The appellant is 38 years old and his mother in her early seventies. He had lived with his father from the age of seven when his parents divorced. His father was awarded custody. His father had thereafter provided for him though, latterly, such had been financially and practically by providing him with a home, rather than emotionally. He and his mother had shared time together now and then through visits by him to the UK and by her to the USA. Despite the lack of frequent and regular contact it was an ongoing relationship. In respect of his mental health there was only one letter, dated August 2015, from a therapist who suggested that the appellant has schizophrenia for which he is able to access and receive treatment. Evidence that he had seen a psychiatrist during a visit to the UK lacked documentary support.

15. It is necessary to show that there is a real, committed or effective support or relationship between the family members and the normal emotional ties between a mother and an adult son are not without more, enough. It is difficult to see how the judge on the evidence before her could have

properly concluded that the appellant has a family life in any sense capable of coming within the meaning and purpose of Article 8. As for private life there is no obligation on an ECHR state to allow an alien to enter its territory to pursue private life (per ***SSHD v Abbas*** **[2017] EWCA Civ 1393**).

16. Nonetheless, having apparently taken a generous view of the existence of family life, she concluded that any interference with the right to respect for such family life did not have consequences of such gravity as potentially to engage the operation of Article 8. Here she appears to have been unaware of ***AG (Eritrea)*** [2007] EWCA Civ 801 where it was held that *"While an interference with private or family life must be real if it is to engage art 8(1) the threshold of engagement (the 'minimum level') is not a specially high one."* Further, her reasons for finding (at [32]), that there would be no interference, namely, the lack of evidence of the impact of the refusal where the reality was that they had not lived together for many years; the fact that they had shared only short periods of time together; that he has lived with his father and when not doing so his father had made arrangements for his care; that his father could pay someone to move in and provide care, appear to go more to the proportionality assessment. As she also noted he does not meet the Rules. Further, as indicated, there was a lack of medical evidence about the appellant's medical health, namely, a single letter from a therapist whose qualifications are unclear. It is dated August 2015. There was nothing up to date. There was no indication as to what he is capable of doing himself and not doing, and the extent to which his mental health has debilitated him.

17. It is evident that the judge proceeded to the fifth test set out in ***Razgar***, namely, proportionality. It appears that she used her findings in [32] together with a finding (at [33]) that the sponsor has the option of going to the USA and putting in place arrangements for his care.

18. At [34] she was alert to s117B and, in particular, that immigration control is in the public interest.

19. I agree with Ms Everett that the judge erred in not adopting a clearer approach to the various ***Razgar*** steps as she should have done and as she stated was her intention. As indicated it is difficult to see how the judge on the evidence before her could find that there was family life. Nonetheless, having apparently taken the case at its highest she reached adequate findings and conclusions on proportionality which were open to her on the evidence for the reasons she gave (at [32, 33,34]).

20. I may say I do not find merit in Ms Chapman's submission that it was appropriate in assessing materiality of error that evidence that was not before the judge should be taken into account. No additional evidence was sought to be lodged before the Upper Tribunal. No application was made to vary the grounds.

21. The issue is whether on the evidence before her the judge made a material error of law. For the reasons stated I find that no material error was made and that her decision stands.

Notice of Decision

The decision of the First-tier Tribunal does not show material error of law and that decision dismissing the appeal shall stand.

No anonymity order made.

Signed Date 8 July 2019

Upper Tribunal Judge Conway