



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

Appeal Number: IA/08936/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 6 November 2013**

**Decision Promulgated
On 27 November 2013**

Before

**UPPER TRIBUNAL JUDGE ESHUN
UPPER TRIBUNAL JUDGE CRAIG**

Between

MR SIMRANJIT SINGH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, Counsel
For the Respondent: Ms J Isherwood, HOPO

DECISION ON ERROR OF LAW

1. The appellant is a citizen of India born on 1 February 1993. He came to the UK on 6 October 2006 with a valid leave to enter until 28 April 2008 as a dependant of Mr Hadial Singh who had leave as Minister of Religion. On 1 May 2008 the appellant along with his mother (Kanta Kanta) and sister (Prabhjot Kaur), who had also entered with the appellant on 6 October 2006, submitted applications as dependants of Hadial Singh. Their

respective applications were refused on the basis that the sponsor's earlier leave was curtailed on 25 January 2008. On 10 February 2012 the appellant's mother and sister were granted one year discretionary leave to remain to allow the appellant's sister to complete her GCSE examinations.

2. The appellant's application was refused on 10 February 2012. The appellant was excluded from the grant of discretionary leave because he was over 18 and deemed not to be a dependant on his mother unlike his sister. His appeal came before First-tier Tribunal Judge Maxwell who allowed the appeal on the ground that the Appellant was part of the family unit and ought to be allowed to remain in the UK until his sister's leave expired. He was therefore also granted leave to remain in line with his mother and sister.
3. When the grants of discretionary leave expired, the appellant, his sister and mother applied for further leave together but were refused at different times. The appellant was refused on 6 March 2013. His mother and sister were refused on 27 June 2013.
4. The appellant's appeal came before First-tier Tribunal Judge Seelhoff on 29 July 2013, who dismissed the appeal which was brought under Article 8 of the ECHR. It is against this judge's decision that the appellant has been granted permission to appeal.
5. The grounds of application raised two issues. The first was in relation to the request made by the appellant's representative below to adjourn the hearing in order to link the appellant's appeal with those of his mother and sister. Prior requests had been refused on paper due to a lack of information. The adjournment request was again made before the judge, who said he would normally consider it appropriate to adjourn however he had concerns on the facts of the case.
6. The judge said as follows:
 - “7. These concerns were highlighted when Counsel submitted that if I adjourned the case to be linked to those of the appellant's family then the current listing patterns by the time the cases come to be heard the appellant's sister will have completed seven years in the UK and will be eligible for leave under the Immigration Rules relating to private life. I indicated that this seemed to me to be an attempt to abuse the current delays and backlog in the system to give the various applications a strength they did not have at the date of the application or of the hearing before me. In these circumstances I refused the adjournment request.”

7. Following his findings on the appellant's appeal, the judge returned to the application to adjourn towards the end of his determination. He said at paragraph 27 that he was troubled by the application and particularly by the argument advanced by Counsel to the effect that if he had adjourned the appeal to be linked with that of the appellant's sister and mother, the sister would accrue seven years before the appeal was determined. The judge found that the application and the submissions made in support of it amounted to an abuse of process and as such was a breach of Counsel and instructing solicitors' duties to the court as set out under their respective codes of conduct. While he noted that they have a duty to act in the best interests of clients that duty is secondary to their duty to the court. The judge relied on a decision by Sir John Thomas who, in **B & Another, R (on application of) v Secretary of State for the Home Department & Another (Rev 1) [2012] EWHC 3770**, endorsed Lord Denning's assessment of these duties.
8. Following arguments by the parties, we found that the judge erred in law. We give our reasons why.
9. The judge did not specify the respective codes of conduct which were breached by the appellant's legal representative. In the case relied on by the judge, Lord Denning had said that the duty of the Advocate "is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth". The judge did not specify if this was the code of conduct that had been breached. Having acknowledged that those representing the appellant are competent, he merely said that he encouraged them to consider their approach more carefully in the future. Their approach was not tantamount to a breach of conduct. In fact the representative was setting out the appellant's case in detail in addition to which the judge was himself aware that the appeals of the appellant's sister and mother were in the process of being listed.
10. We also find that the judge failed properly to consider the reasons for the adjournment choosing instead to concentrate on his concern that somehow this was an attempt to abuse the court process to enable the appellant's sister to gain a material advantage.
11. The judge then went on to criticise the appellant's choice not to call his mother to give evidence, stating that any evidence relevant to the applications of the appellant's mother and sister could and indeed should have been put before him when he heard the appeal. We find that an unreasonable criticism. The appeals of the appellant's sister and mother were not before the judge. Their appeals were to be heard on a different date. The appellant was not required to call his mother to give evidence on his behalf. The judge went beyond his remit in seeking to hear evidence from the mother so that he could determine their appeals in advance of their hearing date. That was clearly an error of law.

12. We find on the second ground that the judge's assessment of the appellant's appeal under Article 8 was fundamentally flawed as it proceeded on the basis that the appellant, his sister and mother should never have applied for extensions and were restricted to the period of leave already granted. His finding that the whole family would be leaving together was irrational and perverse since the appeals of the mother and sister had yet to be determined.
13. We find for the above reasons that the judge's decision cannot stand. We set it aside. We order that the appeal of the appellant be reheard with the appeals of his mother and sister which are scheduled to be heard on 24 February 2014 at Taylor House.
14. None of the judge's findings shall stand.

Signed

Date

Upper Tribunal Judge Eshun