



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

Appeal Number: IA/08786/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 3 September 2014

Determination

Promulgated

On 3 October 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

JAMIL AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Javed, Rice Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was born on 26 July 1976 and is a male citizen of Pakistan. He appealed to the First-tier Tribunal (Judge Henderson) against a decision of the respondent dated 12 April 2013 to refuse him leave to remain in the United Kingdom on the basis that his removal would not breach Article 8

ECHR. The First-tier Tribunal dismissed the appeal in a determination promulgated on 30 May 2014. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that the determination of the First-tier Tribunal should be set aside. I reach that conclusion for the following reasons. A determination should clearly state the outcome of the appeal and give cogent reasons to explain and support that outcome. That is not the case with this determination. At the end of the determination under the heading “the Decision” Judge Henderson has written:

The appeal is dismissed under the Immigration Rules with reference to Appendix FM.

The appeal is dismissed under Article 8 of the ECHR and a grant of discretionary leave of an appropriate period will normally follow.

3. That latter sentence is ambiguous in any event and the main body of the text of the determination fails to provide adequate clarification. The judge made findings adverse to the appellant’s appeal as regards the claimed genuineness of his relationship with his partner (the sponsor) and her children. At [57], the judge concluded that “[The sponsor and children] are being used by the appellant in an effort to secure status in this country.” On the other hand, at [45] the judge found that there had been little consideration by the Secretary of State “of the consequences of the removal of the appellant for the best interests of the children in this appeal. Both of the children are British citizens and, as far as I am aware, have lived in this country all their lives.” She went on to observe that, “the children have made their feelings very clear. I have read through their letters. They are happy to accept the appellant into their lives and report that he is playing an active role in their lives.” Most significantly, at [53] the judge stated that her “overall conclusion is that it is not in the best interests of these children for the appellant to be removed from their lives.” The last part of that sentence is particularly significant; the judge did not simply find that the children’s best interests would be served by their remaining in the United Kingdom but that the appellant should remain with them. Later in the determination at [57] the judge went on to further conclude that the appellant “is pursuing his own agenda in this application and in this relationship. I do not accept taking into account all the factors I have outlined but the decision to remove the appellant is disproportionate.” The last sentence may be taken as determinative of the appeal even though it appears contrary to the proposed grant of discretionary leave which the judge indicates should “normally follow”. Obviously, the interests of the children are not a paramount consideration but may be outweighed by a combination of other countervailing factors. Here the only countervailing factor would appear to be the judge’s concern that the appellant is cynically using the sponsor and the children as a means to stay in the United Kingdom. Having found that it was important and in the children’s best interests for the appellant to remain part of the children’s lives it is not at all clear why that single countervailing factor

should prevail. The judge has not, for example, made any findings as to the likely future of the appellant's relationship with the sponsor and the children; she has not found that, because he is not genuinely attached to them, the appellant would be likely to separate from the sponsor and the children in any event.

4. Mr Javed urged me simply to remake the decision by allowing the appeal but, having read the determination carefully, I am not at all certain as to whether Judge Henderson had intended to allow or dismiss this appeal. I consider that the only proper course of action is for me to set aside the determination of the First-tier Tribunal and to direct that the decision be remade in that Tribunal by a judge other than Judge Henderson. None of the findings of fact shall stand.

DECISION

5. The determination of the First-tier Tribunal which was promulgated on 30 May 2014 is set aside. None of the findings of fact shall stand. I direct that the appeal should be heard again in the First-tier Tribunal by a judge other than Judge Henderson.

Signed

Date 20 September 2014

Upper Tribunal Judge Clive Lane