



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/01341/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent  
On 28<sup>th</sup> January 2016

Determination Promulgated  
On 30<sup>th</sup> March 2016

Before

MR C M G OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE MARTIN

Between

A R  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Hodgetts (instructed by Duncan Lewis & Co)  
For the Respondent: Mr T Wilding (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, against the determination of First-tier Tribunal Judge Dhaliwal promulgated on 13<sup>th</sup> April 2015 in which she dismissed his appeal against the Secretary of State's decision to refuse his asylum claim in a decision taken on 6<sup>th</sup> January 2015.

2. The Appellant is an Afghan national born on 6th January 1996. His date of birth was established after a social work assessment. He arrived in the UK and claimed asylum in February 2010. That asylum claim was rejected by the Secretary of State and dismissed on appeal by the First-tier Tribunal. In accordance with her policy however, the Secretary of State granted the Appellant discretionary leave as he was then aged 15. He then became a “looked after child” and was the responsibility of Worcestershire County Council. He was placed in emergency accommodation and after two false starts was placed with his present foster family with whom he has remained ever since.
3. Prior to the expiry of his discretionary leave the Appellant made a further application to remain on asylum and Human Rights grounds and it is the refusal of that decision that was the subject of the appeal before the First-tier Tribunal.
4. The First-tier Tribunal dismissed the asylum claim on the same grounds that it was dismissed in 2010 and for the same reasons found the Appellant was not entitled to humanitarian protection or to succeed under Articles 2 or 3 of the ECHR. Those decisions were not challenged before us.
5. The First-tier Tribunal Judge then went on to consider the Appellant's private and family life claim. She noted that neither Appendix FM nor paragraph 276ADE could assist him, a matter that was accepted by those representing him. The Judge then considered Article 8 outside the Immigration Rules. It is not argued that she was wrong to do so. The Judge accepted the Appellant must have an established private life due to the length of stay in the United Kingdom (from age 14 to 19 at the date of the First-tier Tribunal hearing). She found that Article 8 was clearly engaged in the appeal and moved on to the issue of proportionality. However, at paragraph 51 of her decision the Judge did not accept that family life existed in this case due to the fact that the Appellant was a foster child and repeated in paragraph 67 that the Appellant had no family life in the UK. She found the Appellant's private life would be interfered with in a manner which would engage Article 8 but that the interference was proportionate when balanced against the interests of the community as a whole.
6. The Appellant sought permission to appeal to the Upper Tribunal. This was initially refused by a Judge of the First-tier Tribunal but subsequently granted by a Judge of the Upper Tribunal.
7. The Upper Tribunal Judge made an error in the grant by mistaking the age of the Appellant as at the date of the First-tier Tribunal hearing as being 15 when in fact he was 19. So much was quite properly pointed out in a note to the Tribunal by the Appellant’s representatives. However, the main reason for the grant of permission was that the Judge had arguably erred in finding that the Appellant’s relationship with his foster parents could not form the basis for a finding that there was family life in the UK.

8. Before us Mr Wilding accepted that the First-tier Tribunal's decision was tainted by material error of law in that regard. It was accepted that the case law and in particular the cases referred to in the grant of permission, made clear that it was possible for family life to exist between a foster child and foster parent. Those cases are Kopf and Liberia v Austria (Application No. 1598/06), Moretti and Bendetti v Italy (Application No. 16318/07), Price v UK (1988) 55DR 224 and Gaskin v UK (1990) 12 EHRR 36. Furthermore, in Martin Cebekhula Mthokozisi v Secretary of State for the Home Department [2004] EWHC 2964(Admin), the Secretary of State conceded that family life could exist between a foster child and a foster parent.
9. It being accepted that the First-tier Tribunal made an error of law in its decision and reasons so far as the Article 8 findings are concerned we set it aside and go on to redetermine the appeal on Article 8 grounds only. The other findings were not challenged.
10. In order to succeed the Appellant needs to satisfy us both that family life exists between himself and his foster parents notwithstanding that he is now an adult and that his removal from the UK consequent on the Secretary of State's decision will be a disproportionate breach of his right to a private and family life.
11. On behalf of the Secretary of State, Mr Wilding was prepared to accept that the relationship between the Appellant and his foster family during his minority amounted to family life for the purpose of Article 8.
12. The Appellant needs to satisfy us that it continues to do so notwithstanding that he is now an adult of 20 years. The case of Ghising [2012] UKUT 00161 (IAC), relied upon by the Appellant, states in the headnote:-
 

"A review of the jurisprudence discloses that there is no general proposition that Article 8 of the European Convention on Human Rights can never be engaged when the family life it is sought to establish is between adult siblings living together. Rather than applying a blanket rule with regard to adult children, each case should be analysed on its own facts, to decide whether or not family life exists, within the meaning of Article 8(1). Whilst some generalisations are possible, each case is fact-sensitive".
13. Reliance is also placed on the case of Gurung [2013] EWCA Civ 8 which approved the reasoning in Ghising that the judgement in Kugathas [2003] EWCA Civ 31 had been interpreted too restrictively in the past and what was required in each case was a highly fact sensitive approach.
14. Turning to the facts of this case therefore it is accepted that the Appellant has lived with his foster family since he was a minor in 2011. His social worker, Miss Edwards from Worcester County Council has provided various documents. In one undated letter she indicates that she has been working with the Appellant since June 2011. She indicates that his current placement is his third and has proved very positive for him. He is with a white British family and has integrated well into their family unit, taking part in all family activities and he considers

them to be his additional family. He has settled well into Gloucester and integrated well into the community. He actively takes part in family activities and participates in all celebrations such as birthdays, Christmas, family holidays etc.

15. She indicates that there have been no concerns about his physical health but he has struggled with his emotional health at times and is registered with the Child and Adolescent Mental Health Services (CAMHS) who indicate that he shows traits of anxiety, post traumatic stress syndrome and depression. He suffers from anxiety due to his concerns about being returned to Afghanistan and his safety and suffers tremendously from headaches which affect his day-to-day concentration. This had been highlighted as a concern by his foster carers and CAMHS as a result of which many tests have been carried out which indicated that the headaches were not due to a physical problem. He also suffers from memory loss which is linked to the headaches.
16. She reports that he has an avid interest in education and extra curricular activities and that he worked well in school, communicating well with pupils and teachers. Although his headaches caused distress at school, he always gave his best efforts in class. He is very physically active and particularly enjoyed kickboxing and won many awards for his extracurricular activities. His English language skills have developed tremendously since arriving in the UK and he can now communicate in English easily. In addition to education and extracurricular activities he has involved himself in charity work, raising money for charities and has found himself some weekend work to earn extra money.
17. He is said to react positively with professionals and always shows his social worker and other professionals respect and gratitude. He has a good circle of friends in Gloucester and is a very sociable person.
18. The Social Worker talked about the prospect of him living independently and taking part in Pathway planning meetings. He is said to be able to cook basic meals and keep himself and his environment clean, carrying out general household duties with ease. However she says that he has always had the support of his foster family and has never lived independently. The plan is for him to remain with his foster family after he is 18 in Supported Lodgings. This is due to his vulnerability emotionally. Because he suffers from headaches and memory loss experiences with patches of anxiety and depression he needs ongoing support from people he knows and cares about. He considers his foster family to be his family and would like to remain with them. It is the Social Worker's stated opinion that he would not manage independently and would not progress well without the ongoing support of his foster family.
19. There is then a "Best Interests Consideration Pro forma" prepared by the same Social Worker in which it is stated how much he values his relationship with his foster family and how they actively support him. That document also refers to the fact that he misses his own family terribly and does not know whether they are dead or alive. He attempted to contact the Red Cross to use the family tracing

service but after initial discussion and warnings of the tactics the Red Cross used to find family which may not be as discreet as they would like, he decided not to use the service being scared for his family's safety. However, he has continued to express a wish to know if his family are well. He is said to have had no contact with them since he came to the UK and there is no suggestion that is untrue.

20. The Appellant' bundle contains a statement from the Appellant's foster mother indicating that he is a fully integrated member of the family. They have spent a considerable amount of money funding his appeal and stress the extra support he needs due to his vulnerability. In particular it is necessary for his foster mother to supervise his medication.
21. There is a report from a Jeanette Campbell Johnston dated 19<sup>th</sup> March 2015. She is an Occupational Therapist in Mental Health currently working as lead psychotherapist at Gloucestershire Action for Refugees and Asylum Seekers (GARAS). The Appellant was referred to her by professionals who dealt with him who had long-standing concerns about his mental and emotional well-being. She met with the Appellant for one hour to make an assessment and also spoke to his foster mother. She concludes:-

"Trauma disorganises and paralyses the psychic apparatus, including the breaking of attachment patterns and in adolescence it also compromises development. PTSD and depressive symptoms remain and have been worsened by the recent appeal procedures.

A needs to move into a state of more conscious mourning where he can bear his losses with greater resilience. He needs further support and stability in order to feel strong enough to take up offers of talking and creative therapies for trauma treatment on offer at GARAS. This needs to happen alongside the presence of strong attachment figures as stand-in parents, namely his foster mother and father. A has gone a long way towards making a "recovery" and this has mainly been achieved through the support offered by his foster family, any separation from them is likely to result in even more severe mental health issues."

22. At the date of the hearing before us the Appellant is now aged 20. He remains under the responsibility of Worcestershire County Council having been a "looked after child." At our request Mr Hodgetts obtained a copy of his "Pathway Plan" dated 11th January 2016. That document sets out that a Care Pathway Plan will set out how the young person's needs are to be met and the date by which, by whom, any action required to implement any aspect of the plan is to be carried out. It also states that the plan is subject to regular review to react to changing circumstances.
23. The Plan gives a brief care history as follows:-

"A arrived in the UK in February 2010. Little is known of A's past prior to this time. From Feb 2010 to March 2011 A was placed in 4 placements, 3 of which were foster care placements. His previous placement prior to his current one broke down due to a

disagreement between his foster carer and A. It transpired that there was a clash of cultures which made it difficult for A to remain in placement.

A is now placed with a white, British family within Gloucester. This placement has proved very successful and A has settled well into the family home. A's care plan is to remain with this family until independence. Post-18 years old, both A and carers requested that the placement was converted to supported lodgings which has now successfully happened-relevant benefits have been applied for and are up and running.

A has no family within the UK and has reported no contact with his birth family since leaving Afghanistan."

24. The overall care plan for the Appellant is said to be:-

"Long-term placement foster carers progressed to a supported lodgings placement under staying put whilst a decision is sought from the Home Office with regard to his stay in the UK- This means that whilst every effort is made to support A's integration into UK life we still have to keep on the agenda the consequences of a negative Home Office decision. A has appropriate legal advice and is being represented through his asylum claim.

A needs to continue with his acquisition of English skills to aid his integration and also to open up his educational possibilities - I hope that the short-term gain of a part-time job and instant cash doesn't distract him from his studies. A is not immune to the love bug and again I hope this doesn't distract from his college and he keeps a balance in his life that is proportionate.

The update to December 2014 is definitely - "could do better" with college attendance and he has been encouraged by myself and Ae regarding this matter.

Supported Lodgings is agreed on the terms that education/training is being pursued.

June 2015 - update

It has been a very testing year so far - the Home Office rejected his claim and he then appealed that decision - mostly on Article 8 grounds and with the financial support of Ae and D - This was rejected after court and now he is applying to the courts to appeal that decision - It is extremely stressful time as he really doesn't know how/where his future will be.

Ae and D have paid legal costs for the ongoing appeal and have been incredibly supportive.

A has improved his college attendance and remains very happy in placement.

January 2016

January 28 --appeal at the High Court is to take place - in fairness he cannot concentrate on anything at this time-

An apprenticeship place is identified and ready to go - A has first pass his Level 1 English test to be eligible."

25. The only major change to his situation is, regrettably, his foster parents have, after 30 years of marriage recently separated, although he continues to live with his foster mother.
26. The level of his foster family's commitment to the Appellant is demonstrated by their willingness to pay his legal fees and that the foster mother is estranged from her own mother as a result of taking the Appellant into the home.
27. We are satisfied overall that the Appellant in this case has significant symptoms of depression and PTSD which manifest themselves, amongst other things in continued headaches which have affected his education. We accept that he is very reliant on emotional support and help with his medication from his foster family, particularly his foster mother, notwithstanding that he is now over the age of 18. In short we are satisfied that he is a very vulnerable individual who is very close to and emotionally dependent upon his foster family. Notwithstanding that he is an adult he remains at home, not as a matter of choice as is the case with many young persons, but out of necessity because of his additional needs over and above those of other young persons approaching adulthood.
28. Looking at the facts of this particular case, as we must, we find that his situation with his family is such as not only to constitute family life but does so notwithstanding he is now an adult. There is clearly a very considerable financial, emotional and physical dependency on his foster mother beyond those one would usually find with a normal young adult and his parents. Adding to that the private life he has established in the United Kingdom since his arrival in 2010, six years ago, and the total absence of contact with his birth family in Afghanistan, we are satisfied not only that Article 8 is engaged but that to remove him would be a disproportionate breach of his private and family life given his considerable vulnerability.
29. We would add that this is not one of those considerable numbers of cases of Afghan teenagers who travel to the UK for a better life, funded by their families with less than credible claims to have no further contact with that family and nothing to return to. There is clear evidence in this case that he has been quite frank in his wish to know about his family and whether they are alive and safe but has been unable to do so for fear of jeopardising their safety. There is nothing to suggest that he has at any time been dishonest about his situation.
30. The Appellant's appeal to the Upper Tribunal is allowed on Human Rights grounds.
31. At the Appellant's request and given his vulnerability we make an anonymity direction.

Signed

Dated 11<sup>th</sup> March 2016

**Upper Tribunal Judge Martin**

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 11<sup>th</sup> March 2016

Upper Tribunal Judge Martin