



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

Appeal Number: AA/09381/2012

THE IMMIGRATION ACTS

**Heard at Newport
On 12 November 2013**

**Determination Sent
On 25 November 2013**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

RH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Webb of Duncan Moghal Solicitors and Advocates
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Introduction

2. The appellant is a citizen of Iran who was born on 21 September 1967. He left Iran in August 2012 and claimed asylum in the UK on 4 September 2012. That application was refused by the Secretary of State in a decision dated 2 October 2012. On that date also, the Secretary of State made a decision refusing to grant the appellant leave to enter and proposing to issue direction for his removal to Iran.
3. The appellant appealed that decision to the First-tier Tribunal. In a determination promulgated on 28 November 2012, Judge Troup dismissed the appellant's appeal on asylum and humanitarian protection grounds and under Article 8 of the ECHR.
4. On 2 January 2013, the First-tier Tribunal (DJ J M Lewis) granted the appellant permission to appeal to the Upper Tribunal. The appeal was listed before Deputy Upper Tribunal Judge Mailer on 16 April 2013. At that hearing, the appellant's representative Mr Webb (who also represented the appellant before me) did not challenge the Judge's decision to dismiss the appeal on asylum or humanitarian protection grounds. Additionally, Mr Webb did not challenge the Judge's decision to dismiss the appeal under Article 8. However, he argued that the Judge had failed to consider the appellant's claim based upon his relationship with his son in the UK under Appendix FM of the Immigration Rules (HC 395 as amended). DUTJ Mailer agreed and concluded that Judge Troup had erred in law by failing to consider the application of Section EX:EX.1. To that extent, DUTJ Mailer set aside the decision of Judge Troup and adjourned the hearing for a further substantive hearing in the Upper Tribunal so that the decision under Appendix FM could be remade.
5. Following a case management hearing on 10 September 2013 (before UTJ Storey), the appeal came before me in order to remake the decision.

EX.1

6. Before me, it was common ground that the only issue which arose under Appendix FM was Exception EX.1. If its requirements are met, the appellant is entitled to leave as a parent. EX.1 provides, so far as relevant, as follows:

"This paragraph applies if

- (a)(i) the applicant has a genuine and subsisting parental relationship with
a child -

- (aa) is under the age of 18 years;

- (bb) is in the UK;

- (cc) is a British Citizen or has lived in the UK continuously for at least 7 years immediately preceding the application; and

- (ii) it would not be reasonable to expect the child to leave the United Kingdom..."

The Submissions

7. Mr Webb submitted that Judge Troup had found that the relationship between the appellant and his son (whom I shall refer to as "A") amounted to "family life" for the purposes of Article 8. He submitted that there was no difference in principle between that "family life" between a son and his father and a "genuine and subsisting parental relationship" between the appellant and his son for the purposes of EX.1(a)(i). In addition, Mr Webb relied on the fact that the "A" has been in the United Kingdom since 23 December 2005. He was then 9 years old having been born 21 April 1996. He became a British citizen in August 2012 and is now 17 years of age. He continues to be in education. Mr Webb submitted, relying upon the decision in Sanade and Others (British Children - Zambrano - Dereci) [2012] UKUT 0048 (IAC), that it would not be reasonable to expect "A" to leave the UK and live with his father in Iran.
8. Mr Richards, who represented the Secretary of State accepted that before Judge Troup the Presenting Officer had conceded that there was "a genuine subsisting relationship between the appellant and [A]" (see para 29 of the First-tier Tribunal's determination). He candidly acknowledged that he was, therefore, in some difficulty in arguing that the appellant did not have a "genuine and subsisting parental relationship" with "A" given that the only relationship that they have is that of parent and child. Further, he accepted that in the light of Sanade it would not be reasonable to expect "A" to leave the UK and live in Iran.

Discussion and Findings

9. As I have said, Mr Richards accepted that the Presenting Officer had conceded that there was a "genuine and subsisting relationship" between the appellant and "A". That, in my judgement is borne out by the evidence in the appeal. As part of the appellant's documentation submitted to the Upper Tribunal there are two witness statements, one from the appellant and another from "A" both dated 20 September 2013. Those statements demonstrate, in my judgement, that the appellant since his return to the UK in September 2012 has maintained a "genuine and subsisting parental relationship" with "A". Although the family's circumstances do not allow for them to live together and the appellant's limited finances has an impact on the appellant's ability to travel to see "A", they remain in close contact; they meet regularly and spend time together with A staying overnight with the appellant sometimes and they remain in contact through the telephone, Skype and Facebook (see para 8 of the appellant's statement and para 5 of A's statement). In his statement, the appellant says (at para 9):

"My relationship with [A] has changed since I arrived in the UK. It is much better and stronger now as we have been able to spend time with each other. The father-son bond between us has grown because of this."

10. Likewise, "A" says in his statement (at para 10):

“The thought of my father going back to Iran makes me sad. I feel that we have really started to bond with each other since he has been in the UK. If he was in Iran our relationship would not be able to continue in the same way as it does now.”

11. Parental relationships can take many forms depending upon the individuals’ circumstances, for example, the age of the child and the relationship (if any) between the parents. It is not necessary that the appellant and “A” should live together for there to be a “genuine and subsisting parental relationship”. Here, A’s parents are divorced and so “A” does not live with his father. However, the evidence clearly establishes they have a close father-son relationship which they seek to maintain as best they can in their own particular circumstances. I am satisfied on a balance of probabilities that the relationship between the appellant and “A” falls within EX.1(a)(i).
12. As regards the other requirements of EX.1, clearly “A” is under the age of 18 years; he is in the United Kingdom; and he is a British citizen. Those requirements of EX.1 are satisfied.
13. As regards the final requirement of EX.1, Mr Richards accepted that it would not be reasonable to expect “A” to leave the UK. That concession is entirely properly made and is correct. “A” is a British citizen and remains in full time education studying at college for a B Tech in Business. He has been in the United Kingdom since 2005 when he was 9 years old. He is now 17 years old. I am satisfied, on a balance of probabilities, that it would not be reasonable to expect him to leave the UK.
14. In these circumstances, the appellant has satisfied me on a balance of probabilities that EX.1 applies.
15. Consequently, as it is not suggested that the appellant fails to meet any other requirement of Section R – LTRPT of Appendix FM, I am satisfied on a balance of probabilities that the appellant meets all the requirements of that provision and is entitled to limited leave to remain as a parent.

Decision

16. The decision of the First-tier Tribunal to dismiss the appellant’s appeal on refugee and humanitarian protection grounds and under Articles 2, 3 and 8 of the ECHR stands.
17. However, the First-tier Tribunal made an error of law by failing to consider the appellant’s claim under Appendix FM. To that extent, I remake the decision allowing the appellant’s appeal under the Immigration Rules, namely Appendix FM (Section R-LTRP).

Signed

A Grubb
Judge of the Upper Tribunal