



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

Appeal Number: IA/05780/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 April 2015**

**Decision & Reasons Promulgated  
On 22 April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GIBB**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ZISHANUR REHMAN ADNAN  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Mr R Singer, Counsel, instructed by Immigration & Work Permit Ltd

**DECISION AND REASONS**

1. Although this is an appeal by the Secretary of State I will refer to the parties as they were before the First-tier Tribunal. The appellant, a citizen of Bangladesh, came to the UK as a visitor, and subsequently applied for leave to remain on Article 8 grounds to live with his older brother, who is settled in the UK. The appellant has been dependent on his older brother since their father's death in 1996. The appellant suffers from beta thalassaemia major, for which he requires care including regular blood transfusions.

2. The Article 8 application was refused on 10 January 2014. The appeal was subsequently allowed on Article 8 grounds, outside the Immigration Rules, by First-tier Tribunal Judge Samimi, in a decision promulgated on 11 December 2014.
3. Permission to appeal was granted to the Secretary of State on 29 January 2015, by First-tier Tribunal Judge Coates. The grounds seeking permission to appeal had been concerned with a failure to apply binding decisions of the higher courts, with reference to **Akhalu (health claim: ECHR Article 8) [2013] UKUT 400 (IAC)**; failing to correctly apply primary legislation, in the form of section 117B of the Nationality, Immigration and Asylum Act 2002; failing to give adequate weight to the public interest; and failing to give adequate reasons for a finding that there was family life between the appellant and his older brother.
4. Permission to appeal was granted on the basis that all grounds were arguable.
5. Mr Walker, for the Secretary of State, made submissions in support of the grounds of appeal. The first three grounds related to inadequate findings on the public interest question. The medical letters referred to the standard of treatment in Bangladesh, not to unavailability. The judge's mind should have been focused to a greater extent on the weight to be given to the public interest. There was a lack of consideration of the appellant not being financially independent, and a lack of reasoning and detail in support of the family life finding. No attention had been paid to the ability of the appellant to return and live independently. The combination of all of these factors amounted to a material error of law.
6. Mr Singer, for the appellant, produced a skeleton argument, responding to the four grounds, and then raising other points as to the nature of an error of law. Although it was accepted that the judge had not mentioned case law, to which it appeared, from Mr Walker's minute in the file, that she had been referred, nevertheless she had taken into account the key points raised by relevant cases. At paragraph 20 it was clear that the judge had considered the issue of the cost of healthcare, and the economic burden. The point related to substance rather than form. The real complaint by the Secretary of State was concerned with weight, but matters of weight were for the judge. It was clear from paragraph 18 of the decision that the medical aspect did not stand alone. Instead it was linked to the family life with his brother, and his brother's family. This had also been an unusual case in that the medical evidence was from a doctor who had expertise in the treatment of the condition in Bangladesh, and the exact differences between the two countries, in respect of treatment of this particular condition.

### **Error of Law**

7. As I indicated at the hearing I have decided, having considered the grounds, and the submissions by both sides, that it has not been shown that there was any material error of law in the judge's decision.
8. Particular reference was made, in the grounds, to the **Akhalu** decision. It is significant to note that the outcome of that case was the rejection of an appeal to the Upper Tribunal by the Secretary of State, where an appeal had been allowed on Article 8 grounds, with reference to health matters. It appears to me that the comments made at the end of the **Akhalu** case are directly applicable to this appeal.
9. Mr Walker, for the Secretary of State, did not seek to argue that the legal position had shifted from that discussed in the **Akhalu** case, including the observations by the Court of Appeal in **MM (Zimbabwe) v SSHD [2012] EWCA Civ 279**; and in **GS and EO [2015] EWCA Civ 40**. In brief terms the position remains that the door is legally open to an appellant being able to succeed in an Article 8 case, where a health issue is one of the factors (but not where the health issue stands alone), although it is the case that such success will be "very rare".
10. Looking at the four grounds in turn it does not appear to me to be correct to say that the judge has failed to follow relevant authority. Although the judge has chosen not to cite particular cases it is clear from her decision, both in terms of structure and reasoning, that she had in mind the key legal principles summarised in the **Akhalu** case. If it could be argued that the relevant legal principles made it impossible for an appeal of this sort to be allowed, then an error of law might flow from the very fact of the outcome itself, but that is not being argued. It is quite clear, even from the particular outcome of the **Akhalu** case itself, that certain cases can succeed.
11. The second ground does not appear to me to be made out. It cannot possibly be said that the judge has failed to have regard to Part 5A of the 2002 Act. On the contrary, she has set out section 117B in full in her own decision, and has then gone through the various factors.
12. As for the third ground it cannot be said, in view of the judge's comments at paragraph 20, that she failed to give weight to the public interest and the economic burden. The wording in paragraph 20 makes it clear that this was a central and important issue for the judge. It may be that the judge did not accept the Secretary of State's submissions as to the amount of weight to be given to the public interest, but that cannot be said to involve an error of law, since matters of weight were for the judge.
13. As for the fourth ground the facts and findings are reasonably clear. The appellant has been entirely dependent on his older brother for some years. His health problems place him in an unusual situation. Since arrival in the UK in 2012 he has lived as part of his older brother's household, and has remained entirely dependent on him. Given the medical and other evidence summarised in the decision it does not appear to me to be

arguable that the judge erred in law in providing inadequate reasons for the finding that there was, on these particular facts, family life between the appellant and his older brother, despite the fact that the appellant is now an adult.

14. In the **Akhalu** case there is a citation, at paragraph 52, from **Mukarkar v SSHD [2006] EWCA Civ 1045**. This deals with factual judgments, and the way in which decisions on the facts in particular cases should be respected. There is nothing in the grounds or submissions that I have heard that appears to me to take the various challenges outside the factual arena.
15. In my view it has not been shown that the judge made a legal error. There were unusual and particular circumstances in this appeal. The judge came to the view, which was clearly one that was open to her on the particular facts, that this was a case that was different from the majority of cases where disadvantage flowing from less favourable healthcare is a key issue. Once it is accepted that there remains room, legally, for certain cases to succeed on their particular facts, then it becomes difficult to establish an error of law where the correct legal framework has been applied, and due regard has been had to the principles of the relevant case law and the new statutory public interest factors. In short, no error of law having been found, this decision has to be regarded as one that was open to the judge on the evidence before her.
16. Neither side suggested any need for anonymity in this appeal and I make no such direction. The judge made no fee award. This has not been challenged, and neither was any application made for any fee award.
17. For all these reasons the appeal to the Upper Tribunal is dismissed, and the determination of the First-tier Tribunal will stand.

### **Notice of Decision**

The appeal by the Secretary of State is dismissed. The decision of the First-tier Tribunal allowing the appeal on human rights grounds stands.

No anonymity direction is made.

Signed

Date **22 April 2015**

Deputy Upper Tribunal Judge Gibb