



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

Appeal Number: IA/16899/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 11th December 2014**

**Determination Promulgated
On 20th January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**GURPREET SINGH GILL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DECISION AND REASONS

1. At the hearing there was no appearance by or on behalf of the appellant. I observed that notice of the hearing had been sent to both the appellant and representatives, Kumari-Banga Solicitors, on 3rd November 2014 and had not been returned in the post. Having regard to the provisions of paragraph 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I was satisfied that it was in the interests of justice to proceed in the absence of the appellant.
2. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion, I continue to refer to the parties as they were before the First-tier Tribunal.

3. On 9th October 2014 Judge of the First-tier Tribunal Chohan gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal S J Pacey in which he allowed the appeal on immigration and human rights grounds against the decision of the respondent to refuse leave to remain in accordance with the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules.
4. In granting permission Judge Chohan noted that the grounds of application submitted that the judge erred by making a freestanding Article 8 assessment without considering whether there were any compelling circumstances not sufficiently recognised under the Rules to take that step. Judge Chohan also noted that the judge had found that the appellant had done nothing wrong and appeared to have much sympathy for his circumstances, but that it was arguable that the judge had given insufficient reasons for finding that there were compelling circumstances for allowing the appeal outside the Immigration Rules.
5. At the hearing before me Ms Johnstone contended that the appellant's claimed loss of his passport through alleged negligence by his agent, Brighter Vision Company, did not amount to compelling circumstances which could lead to a grant of leave to remain outside the Immigration Rules even if only to extend his leave until he could obtain a further travel document.
6. There were no submissions before me for the appellant although I had regard to the original grounds of appeal, the circumstances of the appellant's application and the findings of the First-tier Judge.
7. The decision does not show that the judge gave consideration to whether or not the appellant's circumstances in requiring an extension to his visa to obtain a passport or travel document actually gave rise to a breach of his Article 8 rights. Although the judge reaches a conclusion in paragraph 13 of the decision that the respondent's refusal was disproportionate in Article 8 terms, he has not explained how the circumstances gave rise to a breach of private life or family life.
8. It appears that the judge also applied the test of "compelling circumstances" set out in *Gulshan* [2013] UKUT 00640 (IAC) wrongly, not only because such a test has been said to be unnecessary by the Court of Appeal in *MM* [2014] EWCA Civ 985, but because the judge appears to have considered that the appellant's loss of his passport through the negligence of his agent as amounting to such circumstances without considering whether the loss could lead to a breach of Article 8. On this basis the decision shows a material error on a point of law such that it should be re-made.

Re-making the decision

9. The appellant did not appear at the hearing to give evidence of any additional circumstances, other than the loss of his passport, which might have given rise to a breach of Article 8 rights which, applying the *Razgar* five stage tests, might lead to the conclusion that the respondent's decision was disproportionate. On the basis of the circumstances as set out in the decision of the first judge (which have not been criticised by the respondent) it is not possible to reach the conclusion that the appellant's Article 8 rights are engaged. On this basis the first of the *Razgar* tests cannot be passed. The appeal therefore has to be dismissed.

NOTICE OF DECISION

The decision of the First-tier Tribunal contained an error on a point of law such that it should be re-made. I re-make the decision by dismissing the appeal on immigration and human rights grounds.

Anonymity

Anonymity was not requested before the First-tier Tribunal nor do I consider it appropriate.

Signed

Date **20th January 2015**

Deputy Upper Tribunal Judge Garratt

TO THE RESPONDENT
FEES AWARD

As I have dismissed the appeal there can be no fee award.

Signed

Date **20th January 2015**

Deputy Upper Tribunal Judge Garratt