



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

Appeal Number:
IA/02109/2015

THE IMMIGRATION ACTS

Heard at: Manchester

On: 28th April 2016

Determination

Promulgated

On 6th May 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

[A P]

~~(no anonymity direction made)~~

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant:

no appearance

For the Respondent:

Mr McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of India born on the [] 1977. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Carlin) to dismiss his appeal against a decision to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999. That decision followed a refusal to grant him leave to remain on

¹ Permission to appeal to the Upper Tribunal refused by First-tier Tribunal Judge Osbourne but granted by Deputy Upper Tribunal Judge Archer on the 17th November 2015.

human rights grounds.

Background and Matters in Issue

2. The Appellant came to the United Kingdom in 2008 as a Working Holidaymaker. Before his visa expired he made an application for leave to remain outside of the Rules. That was refused, and a subsequent appeal dismissed. The Appellant became 'appeal rights exhausted' on the 18th March 2011. He has been an overstayer since that date.
3. On the 5th April 2014 he made an application for leave to remain on human rights grounds. The principle feature of that application was that the Appellant has health concerns, namely Type II diabetes and Bipolar Affective Disorder, and that he receives care from his brother who lives in the UK.
4. The application was refused on the 24th December 2014. The Respondent first addressed the Immigration Rules (Appendix FM and paragraph 276ADE 'private life') and finding the Appellant qualified under neither, considered whether there are any exceptional circumstances such that leave should be granted 'outside of the Rules'. Although the Appellant's medical issues are noted, the Respondent considered it reasonable that he return to India where medical treatment is available. The Appellant's assertion that he would be destitute if returned to India is rejected: on his own evidence he has two brothers there, and he has relatives in the United States of America and United Kingdom who would be willing and able to support him. As to the Appellant's case that he depends on his brother in the United Kingdom for day-to-day care the Respondent relies on the findings of First-tier Tribunal Judge Rimington, made in the determination of the 2011 appeal: "there is no evidence of anything other than a normal sibling relationship in this case between two adult brothers. I do not accept that the appellant's right to a family life has been engaged". Since the Appellant had not provided any evidence to displace that finding the Respondent was not satisfied that there was any dependency.
5. When the matter came before Judge Carlin there was no appearance by the Appellant. His representatives had written in to say that due to his mental health issues he would not be attending. Having taken account of the relevant Procedure Rules the Tribunal proceeded to hear the appeal. The determination reaches the following conclusions:
 - i) That the Appellant is not "unduly affected" by his Bi-polar Disorder. This conclusion was based upon letters from the Appellant's GP who confirmed that he is taking Setraline and his mood and general functioning have improved;

- ii) There was no evidence to suggest that the Appellant's diabetes had a significant effect upon him;
 - iii) The Appellant is a qualified electrician and there is no evidence that his health would prevent him from working should he return to India;
 - iv) His medical conditions are both controlled by medication that is available in India;
 - v) Neither condition is life threatening;
 - vi) He has family in India who would be able to support him;
 - vii) There is no evidence to support the assertion that the Appellant is dependent upon his brother in the UK and Article 8 is not therefore engaged.
6. The grounds assert that the appeal ought to have been allowed. The grounds plead that the treatment for Bi-polar Affective Disorder is very limited in rural India and that the Appellant will not receive the same level of treatment as he receives in the UK. His illness will become critical and life-threatening. It is submitted that the Appellant's situation is exceptional and discretion should have been exercised in his favour.

Error of Law: Findings

7. When the matter came before me there was no appearance by the Appellant. The day before the hearing the Tribunal received a fax from the Appellant's representatives who requested that the appeal be determined on its merits, they being without instructions. Being satisfied that the Appellant had been sent a Notice of Hearing to his last known address in good time before the hearing, I decided that it would be contrary to the interests of justice for the hearing to be adjourned.
8. I heard brief submissions from Mr McVeety and reserved my reasoned decision.
9. The grounds of appeal do not identify an arguable error of law in the determination. The grounds take issue with the findings in respect of the Appellant's health, the care and support he receives in the UK and the extent of his private life here. They do not however identify in what respects the Tribunal could be said to have erred in its assessment of those matters. The grounds assert that the Appellant is "unable to control his mood swings and to lead a normal happy life" but this appears to run contrary to the actual medical evidence that was before the Tribunal. The fact that the Appellant is a man of good

character who has “adopted the UK’s lifestyle culture and language” is not a factor capable of justifying a grant of leave on human rights grounds. I bear in mind that the Appellant has not been represented before me and I have read the determination and grounds with care. Having done so I am unable to find any basis upon which I could legitimately interfere with the First-tier Tribunal’s decision.

Decisions

10. The decision of the First-tier Tribunal contains no error of law. The decision is upheld.
11. I was not asked to make a direction for anonymity and on the facts I see no reason to do so.

Upper Tribunal Judge Bruce
2nd May

2016