Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11949/2019 (P)

THE IMMIGRATION ACTS

Decided without a hearing **Decision & Reasons Promulgated**
On 30 July 2020

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

RAMANATHAN ANNES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (P)

1. The appellant is an Indian national who was born on 20 December 2000. He appeals against a decision which was issued by Judge A.J. Blake ("the judge") on 23 October 2019. In that decision, the judge dismissed the appellant's appeal against the respondent's refusal of his human rights claim.

Background

2. The appellant's parents are Mr Narayana Samy Annes and Mrs Kavitha Annes. The family lived together in India until 2008, when Mr Annes came to the UK as a domestic worker. He was subsequently granted Indefinite Leave to Remain and, in 2015, he was naturalised as a British citizen. Also in 2015, Mr Annes sponsored his wife and child to enter the

UK as his dependent relatives. Their applications were successful and on 17 September 2015, the appellant and his mother entered the UK with entry clearance in that capacity.

3. Sadly, the relationship between the appellant's parents deteriorated and, on 8 January 2019, his mother departed the UK voluntarily, leaving the appellant in the care of his father. Shortly before she left, she wrote a letter to the Home Office which was to be used in support of the appellant's application for indefinite leave to remain. It stated materially as follows:

> "I am writing to confirm that I hereby give my full consent for my son, Master Ramanathan Annes to apply for indefinite leave to remain in the UK as the dependant of his father, Mr Narayana Samy Annes.
>
> The relationship between Mr Narayana Samy Annes and myself has broken down and I am retuning [sic] to my home country India.
>
> I have given full responsibility of my Master Ramanathan Anes upbringing and financial support to his father Mr Narayana Samy Annes and I confirm that I want my son to stay in UK with his father as I can't look after my son.

4. The appellant's first application for leave to remain with his father was certified as clearly unfounded. His second was withdrawn. He submitted his third application on the date of his mother's letter: 18 December 2018. That date is of some significance, since it was two days before the appellant attained his majority. The application was supported by a raft of documentary evidence, including some which was directed to showing that the appellant's father was in a position to maintain him adequately.

5. On 2 July 2019, the respondent refused the appellant's application in a fifteen page decision. There is a good deal of repetition in that letter but the core reasoning is as follows. Because the application had been submitted two days before the appellant turned eighteen, the respondent considered the application under paragraph 298 of the Immigration Rules (a person seeking ILR as the child of a parents (etc) present and settled in the UK). The respondent was satisfied that the appellant's mother had returned to India and that his father had had sole responsibility for him since then, such that paragraph 298(i)(c) of the Immigration Rules was met. She was not satisfied, however, that paragraph 298(iv) and (v) were met, however, because she did not consider that the sponsor could accommodate and maintain the appellant adequately. The respondent then considered whether there were circumstances outside the Immigration Rules which warranted a grant of leave to remain as a result of Article 8 ECHR. She concluded that there were not. The appellant's mother made no reference in her letter to having disowned him. He had lived with his mother in India for many years and would be able to return

to live with her and other relatives whilst he was supported financially by his father. He wished to remain in the UK with his father and to study here but he could study in India and could remain in contact with his father via Skype and visits. He did not qualify for leave under the Immigration Rules and there were no exceptional circumstances which warranted a grant of leave outside those Rules.

6. The appeal came before the judge as a floating case at Taylor House on 27 September 2019. The appellant was represented by counsel, the respondent by a Presenting Officer. The judge heard evidence from the appellant and his father and submissions from the advocates before reserving his decision.

The Decision of the First-tier Tribunal

7. In his reserved decision, the judge concluded materially as follows.

8. The appellant had not addressed the ground of refusal regarding his father's income; there had been ample opportunity to adduce evidence of the claimed income of £30,00 per annum but this had not been done and the analysis in the refusal letter stood: [80]-[83]. The appellant could not meet the requirements for ILR under paragraph 298 for that reason.

9. As for the Article 8 ECHR claim outside the Rules, the judge noted that the appellant's father had had sole responsibility for him since his mother had left for India in January 2019: [85]. The judge did not accept, however, that the appellant's mother had disowned him; the letter from her did not support that assertion and there was no other evidence in support of it: [86]. The appellant's adult sister and grandmother remained in India: [87]. The judge noted that the appellant and his mother had lived together in India, without his father, for seven years. He considered that the appellant could return to India and enjoy the support of his mother, grandmother and sister. He did not accept that the appellant knew little about his grandmother: [88]. The appellant had completed his education in the UK. He wished to progress to university here but there was a working educational system in India. It was open to the appellant to seek entry clearance as a student. He would be able to keep in touch with his father via contact and visits and he could continue to receive financial support from him in India: [89]-[90]. In the circumstances, there were no 'exceptional circumstances such as to warrant the grant of leave' and the appeal was dismissed: [90].

The Appeal to the Upper Tribunal

10. In grounds of appeal which were settled by the appellant's solicitors, two short points were advanced. Firstly, that the judge had made a finding which was 'wholly against the evidence' when he concluded that the appellant could live with his mother in India. This was not possible

because the appellant was estranged from his mother. Secondly, the finding was contrary to the respondent's acceptance that the appellant's father had had sole responsibility for his upbringing since his mother had left the United Kingdom. The decision was wholly premised on the theory that the appellant could rejoin his mother but that premise was flawed.

11. Permission to appeal was granted by a judge of the First-tier Tribunal, who accepted (without adding more) that these points were arguable.

12. The papers were placed before Upper Tribunal Judge Kamara on 30 April 2020. She had considered, as a result of the pandemic, whether the appeal might be decided without a hearing. She had concluded, provisionally, that the appeal was suitable for determination in that manner. She issued directions designed to elicit any objection to that course of action and any further submissions which the parties wished to make on the merits of the appeal.

13. On 27 May 2020, the appellant's solicitors wrote to the Upper Tribunal stating that they wished to rely on the grounds of appeal and had no further submissions to make. On 5 June 2020, the respondent filed a short reply to the grounds of appeal, submitting that the decision of the judge contained no legal error and should be upheld.

14. Neither party objected to the course of action proposed by Judge Kamara, therefore. Rule 34(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 confers a discretion upon the Tribunal to make any decision without a hearing. By rule 34(2), it must have regard to any views expressed by a party when deciding whether to hold a hearing.

15. The parties were asked for their views on Judge Kamara's proposal. Neither objected to the appeal being determined on the papers. That is relevant but it is not determinative. It remains for me to consider whether, in the exercise of my discretion, I should proceed in that way. Having considered the over-riding objective, and having reminded myself of what was said in Osborn v Parole Board [2014] 1 AC 1115, I consider it fair and just to proceed on the papers. The case involves no disputed oral evidence or the credibility of a party or a witness; the only question, at this stage, is whether the FtT erred in law in deciding the appeal as it did. I consider that I am properly able to determine that question on the basis of the grounds of appeal and the submissions made by Mr Tan, the Senior Presenting Officer who settled the respondent's reply to directions.

Discussion

16. The grounds of appeal are misconceived. The first complaint is that the judge's finding that the appellant could live with his mother in India was made in error, when it was recalled that the appellant was estranged from

his mother. As noted by Mr Tan in the rule 24 response, however, this is to overlook the finding made by the judge that the appellant has not been disowned by his mother. That finding was open to the judge on the evidence, and was a clear rejection of the appellant's account that he had been disowned by his mother when she left the UK.

17. It is then submitted by the appellant that it was not open to the judge to conclude that the appellant could return to live with his mother when it had been accepted by the respondent that his father had had sole responsibility for him since January 2019, when his mother returned to India. This submission adopts a rather selective approach to the respondent's lengthy decision. Although it is correct to state that the respondent accepted in terms that the requirement in paragraph 298(i)(c) of the Immigration Rules was met, that was not her only conclusion in relation to the appellant's mother. Like the judge, the respondent did not accept that the appellant had been disowned by his mother. She evidently concluded, as did the judge, that the appellant had an extant or renewable connection with his mother and that she would 'provide a base' for the appellant to return to in India, as she put it at the foot of p6 of the letter of refusal.

18. Insofar as it might be suggested that the respondent's decision (or that of the judge) was contradictory in this respect, that is not so. As has been explained in a number of authorities over the years, including TD (Yemen) [2006] UKIAT 49 and Buydov [2012] EWCA Civ 1739, the focus of a sole responsibility enquiry in a 'two parent case' such as this is on the extent to which each parent takes responsibility for the child's upbringing. Even if the respondent concluded that the appellant's mother had not disowned him, she could lawfully be satisfied that it was his father who was responsible for his upbringing and had been taking all the decisions in his life since the start of 2019 (at which point he was over 18).

19. The judge's findings could not, to my mind, be any clearer. He did not accept that the appellant's mother wanted nothing further to do with him even though she was content for him to remain in the UK with his father. He concluded, in light of the evidence which he had and that which he did not have, that the appellant's mother (and other relatives) would be there to support him when, as a young adult, he returned to the country of his nationality after spending a few years in the UK. These conclusions were open to the judge on the evidence before him, as was his ultimate conclusion that the respondent's decision was proportionate under Article 8 ECHR.

Notice of Decision

The decision of the First-tier Tribunal contained no legal error and it shall stand. The appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 July 2020