Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19018/2019 (V)

THE IMMIGRATION ACTS

Heard remotely from Field House	**Decision & Reasons Promulgated**
On 31 March 2021	**On 7 April 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

RAHEEM SHEMAR MORGAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr D Coward, Counsel, instructed by Phoenix Chambers
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

The Appellant, a citizen of the United States of America ("USA") born on 20 September 2001, appeals with permission against the decision of First-tier Tribunal Judge Roots ("the judge"), promulgated on 8 April 2020, by which he dismissed the Appellant's appeal against the Respondent's refusal of his human rights claim.

The Appellant arrived in the United Kingdom on 27 July 2018 with entry clearance as a visitor. At this point he was aged 16 years and approximately 10 months. He made his human rights claim on 17 January 2019 aged 17 years and approximately 3 months. The Respondent refused that claim on 5 November 2019 when the Appellant was an adult.

In summary, the Appellant's Article 8 case was as follows. He was born in the USA but had apparently been abandoned by his mother at a very young age. He lived with and was brought up by his grandfather. The Appellant had never met his father. In 2016 the Appellant claimed that he moved with his grandfather to live in Jamaica. It was from that country that he made his way to the United Kingdom in order to ostensibly visit his aunt, Ms L Bailey, a British citizen. The Appellant's grandfather passed away in March 2017. The Appellant claimed that in light of these circumstances he would face very real problems trying to re-integrate into the society of the USA.

The decision of the First-tier Tribunal

The hearing before the judge took place on 10 March 2020 at which point the Appellant was aged 18 years and 6 months. It is readily apparent from the judge's decision that the evidence before him was unsatisfactory in numerous respects (see for example paragraphs 8 and 28–34). Notwithstanding the serious concerns expressed and in the absence of a Home Office Presenting Officer, the judge decided that he would proceed to determine the appeal on the basis that the essential summary of the Appellant's history as set out above was correct (see paragraph 34).

The judge did not accept the following specific matters: that the Appellant had left school at 14; that he had no family whatsoever in the USA; and that he would be unable to try and make contact with his mother at least. The judge re-emphasised the "extremely vague and general" nature of the evidence before him. He proceeded on the basis that the Appellant had gone to live in Jamaica with his grandfather for a time, the grandfather had passed away in March 2017, and the Appellant had then lived on his own (with or without the support of others) for approximately a further year. This, found the judge, showed "fortitude and resilience" on the Appellant's part.

The judge took into account of the fact that the Appellant was a citizen of the USA with all the benefits and rights accruing thereto. The Appellant spoke perfect English and found that he would not have lost any "significant familiarity" with American culture or the way of life in that country. The judge found that the Appellant could be supported in the USA by, for example, Ms Bailey. She had provided support in the past and there was no reason to suggest that this could not continue. The judge took account of the fact that the Appellant was fit and healthy and would be able to seek employment in the USA.

Although at paragraph 44 the judge accepted that the Appellant might face "some difficulty" relocating to the USA, this was said to have fallen "far short" of showing very significant obstacles to integration. The judge concluded that the Appellant could not satisfy any of the relevant Immigration Rules (although, as discussed below, paragraph 276ADE could not have applied to the Appellant in any event).

In considering Article 8 on a wider basis, the judge relied on everything that he had said previously and took account of the mandatory considerations set out in section 117B of the Nationality, Immigration and Asylum Act 2002, as amended. The judge concluded that the Appellant's private life in the United Kingdom was to be given limited weight and that it could be re-established in the USA. The highly precarious nature of the Appellant's status in the United Kingdom was referred to.

In respect of the Appellant's relationship with Ms Bailey, the judge noted the short amount of time over which this had occurred, at least on a direct basis. He noted once again the absence of any detailed evidence concerning the relationship. In all the circumstances the judge did not accept that there was family life for the purposes of Article 8.

Having regard to all factors considered, the judge ultimately concluded that it would be "wholly proportionate" for the Appellant to return to the USA.

The Appellant's challenge

The grounds of appeal can be condensed into the following essential points. First, it is said the judge failed to take proper account of the fact that the Appellant had never lived as an adult in the USA and had become an adult whilst in the United Kingdom. The lack of "adult experience" in the USA was said to be a "crucial factor" that should have been taken into account. Second, the judge failed to have regard to the fact that the Appellant was still a child when his human rights claim was made in this country and that if the Respondent had decided that claim "promptly" it was "highly likely there would have been a different result". Third, the judge was wrong to have found that there was no family life between the Appellant and Ms Bailey. Fourth, that the advent of the COVID-19 pandemic was a significant factor in the Appellant's favour and pointed against the possibility of him being able to reasonably relocate to the USA.

Permission was granted by the First-tier Tribunal apparently on the basis that the judge had arguably made a misdirection in law by failing to consider the Appellant's age at the date of his human rights claim when assessing the question of whether "significant obstacles" applied. For reasons set out below, this was a misconceived basis upon which to grant permission.

Subsequent to the grant of permission the Respondent provided a rule 24 response, dated 13 August 2020.

The hearing

Mr Coward relied on the grounds. He submitted that the age of the Appellant when he left the USA meant that it would be "exceptionally difficult" to re-integrate into the society of that country. The USA was "alien" to the Appellant. The Appellant had established his adult life in the United Kingdom. In respect of the family life issue the judge had not given "enough weight" to the relationship, particularly in view of the Appellant's "turbulent" history of moving from country to country. Ms Bailey was said to be a significant person and the judge failed to recognise this.

Mr Kotas submitted that the judge was entitled to have made the findings he did and to have reached the conclusions clearly set out in the decision. He submitted that the Appellant was doing nothing more than disagreeing with sustainable findings and conclusions.

In reply Mr Coward re-emphasised a number of points previously made and submitted that if the Appellant's age at relevant points in time had been properly considered there would have been an "overwhelming" case and that the judge would have found it to be "remarkably harsh" for the Appellant to go and live in the USA once again.

Conclusions

I conclude that there are no errors of law in the judge's decision. In my view the judge undertook a careful and thorough assessment of the case, notwithstanding what was clearly a highly unsatisfactory evidential picture.

The judge was plainly entitled to make the specific adverse findings of fact set out previously (and indeed there has been no challenge to these).

The matters set out at paragraph 38–42 and 54 – 57 were all relevant and the judge was fully entitled to take them into account. The weight attributable to these factors was a matter for him. No perversity challenge has been mounted and, even if it had been, it would fall way short of the elevated threshold required to make it good.

It is quite clear that the judge had in mind the essential facts of the Appellant's history, namely that he left the USA at the age of approximately 14 and went to live with his grandfather in Jamaica where he stayed until he came to the United Kingdom in July 2018. That chronology brings with it the obvious consequent fact that the Appellant had not lived as an adult in the country of his birth and nationality. It is close to fanciful to suggest that the judge simply ignored this fact when conducting his assessment under Article 8. The same applies to the uncontroversial fact that the Appellant had become an adult whilst in the United Kingdom. Again, this was quite obvious from the basic facts on which the judge proceeded to assess the case.

There is no merit in the delay issue raised in the grounds of appeal. The human rights claim was made in January 2019 and decided in November of that year. On any rational view, there was no material tardiness on the Respondent's part.

As to the relevant Immigration Rules, whilst the judge dealt with the "very significant obstacles to integration" issue, in fact he was not obliged so to do. At the date the human rights claim was made the Appellant was under the age of 18. In addition, he had not resided in this country for at least seven years. Therefore, paragraph 276ADE(1)(iv) and (vi) could not have applied. It is this inescapable position which undermines the reasoning behind the grant of permission.

That the judge did address his mind to paragraph 276ADE(1) makes no material difference to the outcome whatsoever. The factors considered applied equally to the wider assessment under Article 8. Those factors are clearly set out and were done so in the context that: (a) the Appellant had lived in the USA until the age of at least 14 and had not lost any significant familiarity with the way of life in that country; (b) that the Appellant would be returning to the country of his nationality as a fit and healthy adult with the support of at least Ms Bailey (if not other family members which the judge believed the Appellant could re-establish or establish contact with); and (c) that the USA is a wealthy and developed country.

The private life established in the United Kingdom was clearly relatively tenuous and the judge was fully entitled to give limited weight to it, particularly in light of section 117B(5) of the 2002 Act.

Overall, the judge's conduct of the required balance exercise in respect of private life was more than adequate.

On the family life issue, the reasons set out by the judge in paragraph 55 are, in light of the decision as a whole, adequate and sustainable. Mr Coward's submission that "not enough weight" was placed on this relationship is a simple disagreement: weight is a matter for the fact-finding tribunal and would only be interfered with by the Upper Tribunal if perversity could be shown. No such error exists here.

There is simply no merit to the assertion that the Covid-19 pandemic for any relevance to the judge's assessment under Article 8 (even assuming that the argument was put to the judge, in respect of which I have a degree of doubt). The judge was concerned with the position as at the date of hearing, namely 10 March 2020. At this stage of the pandemic the situation in the USA was not as bad as it subsequently became. In any event, the problems faced in that country applied to many other countries around the world, including of course the United Kingdom. It is completely unarguable to suggest that the pandemic formed any basis on which the judge could have placed material weight in an Article 8 assessment.

In light of the above, the Appellant's appeal to the Upper Tribunal must fail and the decision of the First-tier Tribunal shall stand.

Anonymity

The First-tier Tribunal made no anonymity direction and there is no reason for me to do so. I make no such direction.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision of the First-tier Tribunal. That decision shall stand.

Signed H Norton-Taylor Date: 1 April 2021

Upper Tribunal Judge Norton-Taylor