



**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/28014/2013

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 June 2014
Prepared 20 June 2014**

**Determination
Promulgated
On 15 July 2014**

**Before
LORD MATTHEWS
Sitting as an Upper Tribunal Judge**

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**M. Z.
(ANONYMITY DIRECTION)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sharma, Counsel, instructed by Malik Law Chambers, Solicitors

For the Respondent: Mr Deller, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on 7 February 1990. He first entered the United Kingdom on 25 March

- 2011 with a grant of leave to enter as a Tier 4 (General) Student which expired on 30 May 2012.
2. On 29 May 2012 the Appellant applied for a further grant of leave to remain in the same capacity. That application was refused by reference to paragraphs 322(1A), 245ZX(a), and (c) of the Immigration Rules on 20 June 2013, and at the same time a decision was taken under s47 of the 2006 Act to remove him from the United Kingdom.
 3. The reference to paragraph 322(1A) arose because on 22 July 2011 the Appellant had been convicted at Redbridge Magistrates Court of three offences committed on 9 July; taking a motor vehicle without consent, driving a motor vehicle without a licence and driving a motor vehicle without insurance. He had failed to disclose those convictions in his application for leave to remain.
 4. The reference to paragraphs 245ZX (a) and (c) arose because, although the Appellant had been assigned a CAS on 28 May 2012 to study for an Extended Postgraduate Diploma in Marketing, he needed to provide an English language test certificate in the specified form in support of his application, and had not done so. The only certificate relied upon that was in the correct form showed that he had failed on that occasion to pass the threshold score for spoken English.
 5. The Appellant's appeal against those immigration decisions was heard on 29 January 2014, and it was then dismissed under the Immigration Rules, and on Article 8 grounds in a Determination promulgated on 5 February 2014 by First Tier Tribunal Judge Hodgkinson. In the course of that Determination the Judge made specific reference to the s47 decision, and not just to the decision to refuse him a further period of leave to remain. Moreover, we note that, although the Judge had considered in the course of his Determination whether the Appellant had a viable Article 8 appeal against his removal, the Appellant had not raised any such ground of appeal in the IAFT-1 that was lodged with the First Tier Tribunal.
 6. By a decision of Upper Tribunal Judge Goldstein dated 8 May 2014 the Upper Tribunal granted the Appellant permission to appeal upon each of the four arguments that were then advanced as to why the Respondent's decision to make a s47 removal decision in relation to the Appellant was unlawful. The application for permission to appeal raised no challenge to the dismissal of the appeal against the refusal to vary the Appellant's leave to remain under the Immigration

Rules, nor did it raise any criticism of the approach taken by the Judge towards the assessment of the evidence relied upon by the Appellant which might be said to engage his Article 8 rights.

7. The Respondent has filed no Rule 24 Notice, and the Appellant has not subsequently sought to amend the grounds of challenge to the Determination.
8. Thus the matter comes before us.

The grounds

9. When the appeal was called on for hearing Mr Sharma candidly accepted that the four arguments advanced in the grounds to the application for permission to appeal were identical to the four arguments that had been advanced by different Counsel (who had drafted them) before the Upper Tribunal in Castro (Removals: s47 (as amended)) [2014] UKUT 234 (IAC). Mr Sharma did not however accept that we were obliged to follow that decision, in which a Vice Presidential panel had roundly rejected those arguments. He told us (upon instructions) that the decision in Castro was currently the subject of an application for permission to appeal to the Court of Appeal (although he could not tell us whether this was an application that was awaiting a decision by the Upper Tribunal, or one that was awaiting a decision by the Court of Appeal as a result of renewal following refusal by the Upper Tribunal). Again, candidly, he informed us that he was instructed to make no concessions in relation to any of the four arguments, which might in any way prejudice the ability of his instructing solicitors, and their draftsman, to pursue them further elsewhere.
10. For our own part we are satisfied (and Mr Sharma does not dispute) that the four arguments advanced in the grounds to the application for permission to appeal were never pursued before the First Tier Tribunal. Moreover, we are satisfied that no challenge at all was then made by the Appellant to the lawfulness of the s47 decision. It is plain that the Appellant's grounds of appeal as set out in his IAFT-1, were entirely focused upon the Respondent's decision to refuse to vary his leave to remain. Whilst Mr Sharma's preparations for the hearing were no doubt handicapped by the failure of his instructing solicitors to furnish him with a legible copy of the IAFT-1, there can be no room for argument, on this point at least. Moreover, the terms of the Determination offer no basis for any suggestion that these were arguments that had surfaced during the course of the hearing, when the Appellant was represented by other solicitors, and Mr Sharma did not seek to persuade us

that they did. In the circumstances it is extremely difficult to see how the Judge can fairly be criticised for failing to take upon himself the arguments that are now raised upon the lawfulness of the s47 decision.

11. Be that as it may, as set out above, we are satisfied that the four arguments advanced in the grounds to the application for permission to appeal were the subject of full argument by their draftsman, before a Vice Presidential panel in Castro. They found no favour, for the reasons therein set out, and Mr Sharma has entirely failed to persuade us that we should take any different view.
12. We note Mr Sharma's assertion (which he accepted was not made upon instructions from Counsel who appeared in Castro) that we should infer that the decision in Castro is materially flawed for failure to pay regard to a part of the detail of the argument that Mr Sharma considered must have been advanced to the Upper Tribunal, and in particular the argument that passages in the decisions of JS (former unaccompanied child – durable solution) Afghanistan [2011] UKUT 568 (IAC) @ [4] and Mirza and others v SSHD [2011] EWCA Civ 159 @ [18] were authority for the proposition that a lawful removal decision could only be made by the Respondent if she had given reasons for it which showed she had taken into account all material factors, including the factors set out in paragraph 395C. It seems to us that, whether or not these authorities were placed before the Upper Tribunal, and whether or not this was a part of the detail of the argument advanced to the Upper Tribunal, there is no merit in this suggestion.
13. There is no longer any paragraph 395C within the Immigration Rules; the provision was deleted on 13 February 2012, well before this application for leave to remain was made, or, refused. Even when it did form part of the Immigration Rules the provision in question was limited to "*all the relevant factors known to the Secretary of State*". Mr Sharma said that where factors were unknown to the Secretary of State the decision letter should say so but that would be completely unrealistic and unworkable in practice. Furthermore, we cannot see what the point of any such comment would be.
14. Mr Sharma was quite unable to identify to us any relevant factor, material to the s47 removal decision, which was not referred to within the Respondent's letter of 20 June 2013. Once we had pointed him to the salient passages within that letter, because of the illegibility of his own copy, he accepted that the Appellant's age, his

length of residence in the UK, his immigration history, and his criminal record had all been referred to therein in terms.

15. In our judgement, the Respondent can reasonably expect an Appellant in the course of his application for leave to remain to offer details of all the matters that he then considers to be material to that application. It is not suggested before us that this Appellant failed to do so. As is clear from the unchallenged decision of the Judge, the Respondent gave perfectly adequate reasons for the rejection of that application under the Immigration Rules.
16. For the Respondent to comply with Regulation 5(1)(a) of the Immigration (Notices) Regulations 2003 any notice she gave to the Appellant of an immigration decision had to be accompanied by a statement of her reasons for that decision. In our judgement, once it was boiled down, the core of Mr Sharma's argument to us was either that one letter of reasons could not lawfully accompany two different immigration decisions made by the Respondent on 20 June 2013 in relation to the Appellant, or, if it could, that this letter was unlawful because of a failure to give specific reasons for the s47 decision.
17. In our judgement this argument is quite misconceived. We can see no reason at all why the Respondent should not write only one letter of reasons in circumstances such as these. Nor was Mr Sharma able to explain why the letter of 20 June 2013 was not an adequate explanation of the reasons for the s47 removal decision. He could identify no material fact of which the Respondent had been informed, that had been left out of account, and no immaterial fact that had been taken into account.
18. In any event, once the Appellant's application for leave to remain had been refused, then upon the exhaustion of his appeal rights and the expiry of the period of his s3C leave, the Appellant would have no leave to remain in the UK. Mr Sharma could offer no sensible answer to the simple question; why should removal not then follow?
19. In the event, although the grounds of appeal did not raise reliance upon Article 8 matters, the Judge did consider the question of whether or not the Appellant's removal would be proportionate to the relevant legitimate public interest. It is clear that no evidence was placed before the Judge to establish that there was any material matter in the Appellant's circumstances that the Respondent had failed to take into account, or

which had arisen since the date of decision, and which might establish that his removal would engage his Article 8 rights. There was on the other hand a very clear public interest in the Appellant's removal given his lack of any leave to remain, and the matters that the Respondent had referred to in the course of making her decision by reference to paragraph 322(1A) of the Immigration Rules.

20. Accordingly this Appellant was not deprived of the opportunity to present his Article 8 appeal to the Judge as a result of the failure to include reliance upon his Article 8 rights as a ground of appeal; Sarkar [2014] EWCA Civ 195. It has never been suggested that the Appellant has established a "family life" in the UK. No evidence was led to show the nature or strength of the "private life" relied upon, and no submissions were advanced to the Judge either. In the circumstances the evidence relied upon by the Appellant entirely failed to engage with the guidance to be found in the decisions of the Upper Tribunal in Nasim [2013] UKUT 610 and Nasim [2014] UKUT 25, and, the Court of Appeal in Sarkar, and of the Supreme Court in Patel [2013] UKSC 72 on the proper approach to Article 8 claims that rely solely upon "private life". We are not persuaded that the Appellant has established that there was any error in the Judge's decision to dismiss the Article 8 appeal, save of course to the extent that he was not seised of any such appeal.
21. In the circumstances we dismiss the appeal.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 5 February 2014 did not involve the making of an error of law that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

Direction regarding anonymity - Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

**Deputy Upper Tribunal Judge JM Holmes
Dated 20 June 2014**