



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

Appeal Number: AA/09752/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 18 June 2015**

**Decision & Reasons Promulgated
On 22 June 2015**

Before

**UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

HARNEK CHAND BHATTI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss A Fijiwala, Senior Home Office Presenting Officer
For the Respondent: Miss C Charlton, Legal Representative, Bhogal Partners
Solicitors

DECISION AND REASONS

1. We see no need for, and do not make, a direction restricting reporting about this case.
2. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of the respondent, hereinafter “the claimant”, against a decision refusing him asylum and giving directions for his removal. The appeal was allowed solely on human rights grounds with reference to Article 8 of the European Convention on Human Rights and is

challenged by the Secretary of State essentially on two grounds alleging misdirection and failure to follow properly the Rules.

3. The claimant is a national of India. He came to the United Kingdom in the year 2000 and claimed asylum but he did not cooperate with the asylum process. He absconded and his whereabouts were unknown to the Home Office until October 2010 when a data protection request was made. It follows that for much of his long stay in the United Kingdom he was absconding and so preventing the authorities knowing his whereabouts. However, it is also right to say that although after he renewed contact with the authorities in 2010 it was not until almost exactly four years later, in October 2014, that the Secretary of State finally refused his application.
4. The asylum appeal was dealt with briskly by the First-tier Tribunal Judge and no criticism is made of the decision to dismiss the appeal on asylum grounds.
5. The First-tier Tribunal Judge heard the claimant give evidence and heard evidence from people called on his behalf. They clearly made a very good impression. The First-tier Tribunal Judge found them truthful, that the appellant had established a private life in the United Kingdom and found that removal would interfere disproportionately with that private and family life.
6. The difficulty is that the First-tier Tribunal Judge reached that conclusion without any real consideration of the Rules or proper consideration of the statute.
7. Miss Charlton says that it was obvious that the claimant could not satisfy the Rules and therefore the judge is to be excused for not setting out in great detail Rules that could not be met. We understand her point and it is not entirely without merit. We do not find it at all helpful when, as is often the case, we see refusal letters of considerable length dealing with non-existent points but we must not lose sight of the fact that the Rules set out the Secretary of State's version of where the public interest generally lies and where a balancing exercise would normally fall and it draws attention to particular points.
8. On the facts of this case full consideration of the rules would have drawn attention to the requirement under 276ADE(1)(vi) for there to be "there would be very significant obstacles to the applicant's integration". This requirement has really not been considered at all and it should have been. The appellant is a citizen of India. He appears to be a fit man and an industrious man. There is really no reason why he cannot re-establish himself there.
9. The Secretary of State maintains, we find correctly, that the First-tier Tribunal also erred by not considering Section 117B of the Nationality, Immigration and Asylum Act 2002. This sets out with statutory authority certain things that are in the public interest. One of the things in the

public interest is the maintenance of effective immigration control. The claimant is a man who has defied effective immigration control by hiding from the authorities and working when he should not have been working. Apart from any other consideration it is not fair to other people who might want to live in the United Kingdom but who would only do so lawfully and properly to see people who are not anxious to comply with the Rules succeeding and prospering.

10. We agree with Miss Charlton that it is in a way to the claimant's credit that he supported himself by his labours. Certainly it is better than stealing or scrounging but it is not such a good point as he thinks it to be. By working in the United Kingdom without permission he was doing something he ought not to have been doing. We agree with Miss Fijiwala that effective immigration control is achieved by removing those who act as though the Rules were of no consequence and ignore them.
11. The claimant clearly did not satisfy the requirements of the Rules to remain. He had not been in the United Kingdom for nearly long enough. He did not explain why he could not be returned to India. He certainly was not entitled to asylum. This is not a case where the claimant relies on the very strong personal relationships that are within the "family life" element of private and family life that can sometimes make a difference, not for the sake of the appellant but for the sake of those close to him. We are certainly not saying that this is an appeal that would have been allowed if the claimant had a wife or children. Far from it but they would have been additional factors to consider that do not exist here. He is a single man.
12. The First-tier Tribunal has nodded to the requirements of the Rules and the obligation imposed by Section 117B but having recognised these things the Decision shows not engagement with them. The only justification given for the decision is the amount of time the claimant has spent in the United Kingdom.
13. Although the First-tier Tribunal clearly referred to the claimant having absconded, it seems to have lost sight of the fact when conducting the balancing exercise.
14. Miss Charlton had to agree that once the claimant came to light there was no good reason to prioritise this claimant's case at the expense of people who were pursuing applications in a more responsible way. The Secretary of State's delay is unimpressive but, given the history of this case, it is not the kind of culpable or outrageous delay which we regard as particularly significant. This is especially the case as there is a clear statutory authority requiring the decision maker not to give much weight to a private life developed at a time when the immigration status was precarious.
15. We are quite satisfied that this claimant's immigration status in the United Kingdom has been precarious at all material times because he has had no right to be here except insofar as he had a limited right while the claim

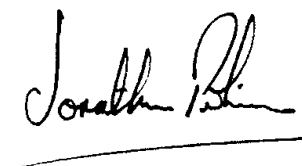
was being pursued. This is a further reason for saying that the appeal should not have been allowed.

16. We are quite satisfied that the First-tier Tribunal erred. It did not explain why this was an exceptional case. It did not explain why the pointers in the Rules that were in favour of the appeal being dismissed were given little or no weight. It did not show that proper weight had been given to the statutory obligation to give little weight to private life established during the precarious time.
17. We set aside the decision of the First-tier Tribunal.
18. We then have to ask ourselves what to do next. This is not a case where it is necessary for wholesale fact-finding again. The facts are clear and we have alluded to the relevant ones already.
19. We do make the point and emphasise that we have considered the statements that were provided in support of the claimant. It is quite obvious that he is a man who makes a very favourable impression on those who know him and deal with him and this is because of his hardworking and positive attitude. That is to his credit, even in the case of someone living unlawfully in the United Kingdom. However these are not weighty points in the balancing exercise. They cannot be. They are perhaps only ways of saying he is not as bad as he might have been. What he did was to live in the United Kingdom in a way that showed no proper regard at all for the requirements of immigration control. He has not built up any of the special relationships which might for the sake of people concerned lead to a different conclusion. His case is not allowable under the Rules and we are quite satisfied should not be allowed outside the Rules.
20. We therefore set aside the decision of the First-tier Tribunal and we substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.

Notice of Decision

The Secretary of State's appeal is allowed. We set aside the decision of the First-tier Tribunal and substitute a decision dismissing the claimant's appeal against the Secretary of State's decision.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 19 June 2015