



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/15848/2014

THE IMMIGRATION ACTS

Heard at: Manchester
On: 13th March 2015

Determination Promulgated
On: 19th May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BRUCE

Between

Mr Rana Muhammad Amin
(no anonymity direction made)

Appellant

And

Secretary of State for the Home Department

Respondents

Representation:

For the Appellant: Mr Holt, Counsel instructed by MA Consultants (London)
For the Respondent: Ms Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan, date of birth 1st January 1954. He appeals with permission¹ the decision of the First-tier Tribunal (Judge Cruthers) to dismiss his appeal against a decision to remove him from the United Kingdom pursuant to

¹ Permission refused on the 30th September 2014 by Designated First-tier Tribunal Judge French, granted upon renewed application by Upper Tribunal Judge Warr on the 16th January 2015

s10 of the Immigration and Asylum Act 1999. That decision had followed rejection of the Appellant's claim to be permitted to stay in the UK on Article 8 grounds.

2. The basis of the Appellant's case was that his removal from the UK would be a disproportionate interference with the family life he enjoys with his two sons who are in the UK with their mother, who is seeking asylum. He also relied on his own poor health.
3. Judge Cruthers very frankly described the Appellant's 'health case' as a "no-hoper". He refers to the decision in N(FC) v SSHD [2005] UKHL 31. On the facts there can have been no error in this approach and none is alleged in the grounds.
4. The subject of this challenge is the approach taken to Article 8. It is submitted that in dealing with this "classic Article 8" case the Tribunal wrongly took into account the new rules, and the Appellant's failure to meet them. It is further submitted that the Tribunal erred in apparently attaching weight to immaterial matters, such as the Appellant's inability to financially support his own sons, his earlier separation from them, and whether the Appellant has a daughter living in Pakistan. Finally it is submitted that there was material evidence that was not adequately dealt with: it is submitted that the Tribunal should have given greater weight to the evidence that the Appellant had only been reunited with his sons by chance whilst in the street in Bolton and that this good fortune had been something that meant a lot to all of them.
5. The Respondent opposes the appeal on all grounds.

My Findings

6. In refusing permission Judge French made reference to the decision in Haleemudeen² to the effect that the First-tier Tribunal was obliged to take the new Rules into account. That decision has now been overtaken by the guidance of the Court of Appeal in Singh and Khalid³. This application was made in June 2010 and the decision to refuse was served on the 19th March 2012. Given those dates the parties before me agreed that this was a straightforward Article 8 appeal and that there was no obligation on the Tribunal to conduct a two-stage test as per the guidance in MF⁴. That said, both representatives agreed that an applicant's ability or otherwise to meet the Rules had always been in some way relevant to the proportionality balancing exercise. In this case Mr Holt challenges the decision of the First-tier Tribunal on the basis that it impermissibly relied on the Appellant's failure under the *new* Rules to find the decision to remove proportionate [at 44]:

"I also have to give some weight to the fact that, with effect from 9 July 2012, parliament laid down new rules relating to "Article 8 cases" and the appellant clearly does not meet those new Article 8 rules..."

² Haleemudeen v SSHD [2014] EWCA Civ 558

³ Khalid v SSHD; Singh v SSHD [2015] EWCA Civ 74

⁴ MF v SSHD (Article 8 – new rules) Nigeria [2012] UKUT 00393(IAC)

7. It is clear from a holistic reading of this determination that this mention of the new Rules at paragraph 44 played little if any part in the Tribunal's decision. That is because in the preceding nine paragraphs the determination sets out clear sustainable reasons why the Appellant fails "under classic Article 8 principles". These are that the family life the Appellant claims to share with his two sons in the UK was severed by him when he sent them away from Dubai; there was no evidence that he had ever supported them financially; in any event they have only limited leave to remain in the UK and it is by no means certain that they would be permitted to stay; the Appellant has never had any basis for remaining permanently in the UK and that should have been apparent to him and his advisors at all times; the Appellant was "deliberately evasive" about the whereabouts of his daughter and in the view of the Tribunal he was hoping to conceal the fact that she is currently in Pakistan; similarly the Appellant had initially tried to conceal that he had at least two siblings alive in Pakistan, a matter about which another witness lied; the Appellant has had extensive recourse to NHS treatment to which he was not entitled; if allowed to remain it would be very likely that the taxpayer would soon be supporting him in his housing and maintenance as well as his health needs. All of those factors considered, the Tribunal found, and was entitled to find, that the Respondent had shown the decision to be proportionate.
8. The second ground of appeal is that some of those matters listed above were not relevant to the matter in hand. It is submitted that the Appellant's inability to support his sons was irrelevant. That is not so. The point Judge Cruthers was making is that it went to the strength or otherwise of his family life with these adults. Nor was the presence of a daughter, brother and sister in Pakistan an irrelevant factor. The case being presented was that this is a frail and unwell man who requires the support and love of his family in the UK: that he could receive such love and support from close relatives in Pakistan was plainly pertinent to the Tribunal's overall assessment.

Decisions

9. The determination of the First-tier Tribunal does not contain an error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce
12th April 2015