



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17573/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 13 January 2015

Determination Promulgated
On 23 January 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Ammar Hussain Malik
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr C Timson, instructed by Amjad Malik Solicitors
For the respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Ammar Hussain Malik, date of birth 16.9.89, is a citizen of Pakistan.
2. This is his appeal against the determination of First-tier Tribunal Judge De Haney promulgated 16.7.14, dismissing his appeal against the decisions of the respondent, dated 31.3.14, to refuse his application for leave to remain in the UK outside the Immigration Rules on the basis of human rights and to remove him to Pakistan. The Judge heard the appeal on 26.6.14.
3. First-tier Tribunal Judge Holmes granted permission to appeal on 30.9.14.

4. Thus the matter came before me on 13.1.15 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge De Haney should be set aside.
6. The appeal had been previously before Judge Devlin on 10.6.14 but at the hearing the appellant raised an asylum claim, based on his father's asylum claim. Although the Home Office Presenting Officer stated that the asylum claim had been refused with no right of appeal, the judge decided to adjourn for further evidence to be provided. It was then relisted before Judge De Haney on 26.6.14, when the Home Office Presenting Officer produced a letter to the appellant's representatives, dated 17.6.14, notifying them that their claim made by post on 10.6.14, the same day as the hearing before Judge Devlin, could not be accepted, as claims for international protection are required to be made in person and not by post.
7. Judge De Haney proceeded to deal with the appeal on the basis of the human rights claim.
8. At §6 Judge De Haney found that the asylum claim "is one which could not be sustained and real questions need to be asked of the appellant's instructing solicitors as to why this claim was raised in the way it was: viz on the date of the previous hearing, why it was not properly pleaded and whether indeed it was an abuse of process."
9. At §21 the judge stated that, "In respect of the asylum and article 3 claim it is clear from the evidence which has been given that this is unsustainable." Similarly, at §25 the judge said, "What is equally obvious from the facts in this appeal is that the appeal cannot succeed under article 3 or the Refugee Convention, nor can it succeed under the Immigration Rules..."
10. In essence, the only issue of merit raised in the grounds of appeal is that there has been no reasoned findings on the asylum and article 3 claims, which were maintained during the appeal hearing and not abandoned, as is clear from the Judge's handwritten notes of the hearing.
11. In granting permission to appeal, Judge Holmes stated, "The judge may have had good grounds to conclude that such an appeal fell to be dismissed - but arguably he failed to articulate what they were. It is not clear from the determination what the reasons were for his decision that the ground "could not be sustained" [6]. Arguably the appellant did not receive a fair hearing of his appeal."
12. There is absolutely nothing amiss with the bulk of the decision of Judge De Haney. However, it is incumbent on the judge to provide reasons for dismissing the asylum and article 3 claims. Even if the judge considered the claims unsustainable, he must state why, providing cogent reasons for that conclusion. It is not necessary for the judge to rehearse every detail or issue, but he must explain at least in brief and clear terms why he reached the decision he did, so that the parties can understand why they have won or lost: Budhathaki (reasons for decision) [2014] UKUT 00341.

13. In the circumstances, and for the reasons stated, it is necessary to set the decision aside for it to be remade.
14. Given that there is nothing wrong with the rest of the decision, and that there may well have been good reasons to regard the asylum and article 3 claims as unsustainable, I consider that the appropriate course is to remit the hearing to the First-tier Tribunal with all findings preserved other than in relation to asylum and article 3, so that if deemed appropriate and practical, it can come back before Judge De Haney to effectively complete the determination by addressing the asylum and article 3 issues, providing his reasons for dismissing or otherwise considering the claims unsustainable.
15. Mr Timson seeks the opportunity to make further submissions on the asylum and article 3 claims and thus the appeal should be relisted for an oral hearing. The First-tier Tribunal Judge can consider whether further evidence should be admitted.

Conclusion & Decision:

16. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the decision to the First-tier Tribunal for rehearing of the appeal.



Signed:

Date: 23 January 2015

Deputy Upper Tribunal Judge Pickup

Consequential Directions

17. The appeal is to be relisted for hearing in the First-tier Tribunal at Manchester;
18. All findings other than in respect of asylum and article 3 are preserved;
19. The estimated length of hearing is 1.5 hours;
20. If practical and deemed appropriate, there is no reason why the appeal should not be listed before First-tier Tribunal Judge De Haney;
21. Further directions may be given by the First-tier Tribunal.

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The outcome of the appeal remains undecided.



Signed:

Date: 23.1.15

Deputy Upper Tribunal Judge Pickup