



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

Appeal Number: IA/21726/2014

THE IMMIGRATION ACTS

**Heard at Field House, London
On 9 June 2015**

**Decision Promulgated
On 19 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE McCARTHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD SHAKEEL ABBASI
(NO ANONYMITY ORDER)**

Respondent

Representation:

For the Appellant: Ms E Savage, Senior Home Office Presenting Officer
For the Respondent: Mr S Kumar, instructed by Capital Solicitors

DECISION AND REASONS

1. On 27 April 2015, the Secretary of State was granted permission to appeal to the Upper Tribunal against the decision and reasons statement of First-tier Tribunal Judge Archer that was promulgated on 4 March 2015.
2. Judge Archer allowed the appeal against the immigration decisions of 3 April 2014 to refuse to vary his leave on the basis that he did not provide the specified evidence to show he met the maintenance (funds) requirements of appendix C to the immigration rules and to remove him by way of directions. In reaching his decision, Judge Archer found that the

appellant did not meet the requirements of the immigration rules but that it would be disproportionate to remove him given the investment the appellant had already made in his studies in the UK.

3. The Secretary of State did not (of course) challenge Judge Archer's decision in relation to the immigration rules. However, she argued that he had failed to apply the statutory public interest considerations contained in s.117B of the Nationality, Immigration and Asylum Act 2002 (as amended) and failed to have regard to the guidance provided by the Upper Tribunal in Nasim and others (Article 8) [2014] UKUT 00025 (IAC).
4. Ms Savage's submissions amplified these grounds. She did not need to go further. However, in reply to my concerns, she confirmed that the Secretary of State did not dispute that Mr Abbasi had established private life within the meaning of article 8(1) and the issue was whether Judge Archer had erred in his assessment in article 8(2).
5. Mr Kumar accepted that the Mr Abbasi could not meet the requirements of the immigration rules. He had failed to provide his birth certificate, which was a mandatory document, with his application.
6. Mr Kumar did not accept, however, that Judge Archer failed to have regard to the statutory public interest considerations. Although Judge Archer does not specifically refer to s.117B of the 2002 Act, in paragraph 27 he described the need to maintain an effective system of immigration control as a legitimate objective. That replicates s.117B(1). In addition, it is clear from paragraph 29 that Judge Archer was aware of Mr Abbasi's immigration history and thereby showed he was aware of the nature of his immigration status. The appellant had applied in time and was not an overstayer. It had to be remembered that when Judge Archer determined the appeal the Upper Tribunal had not reported AM (S 117B) Malawi [2015] UKUT 260 (IAC).
7. As to other issues, Mr Kumar argued that by the date of hearing Mr Abbasi had provided evidence to show that he was related as claimed to his sponsor (his father) and therefore there were sufficient funds to ensure his presence in the UK did not undermine the economic wellbeing of the UK. Although the evidence could not be admitted in relation to the grounds of appeal relating to the immigration rules, the evidence could be admitted in relation to the grounds of appeal relating to Mr Abbasi's private life rights. Mr Abbasi had shown that he had never been a burden on public funds and he had a good immigration history.
8. Mr Kumar also submitted that it should be remembered that in paragraph 23 of his decision and reasons statement Judge Archer found that Mr Abbasi had made a genuine mistake in failing to submit his birth certificate with his application. As such, he should not be penalised disproportionately.

9. Mr Kumar submitted that Judge Archer brought these issues together and carried out the necessary balancing exercise in paragraph 29.
10. As I announced at the end of the hearing, I am satisfied that Judge Archer erred in law when considering article 8(2) and that it is necessary to set his decision aside in order for it to be remade. I also indicated that I would remake the decision in relation to article 8 to dismiss the appeal against the immigration decisions of 3 April 2014 on that ground. I reserved my reasons which I now give.
11. I am not satisfied that Judge Archer's assessment of the proportionality of the immigration decisions is adequate. At no juncture does Judge Archer refer specifically to s.117 of the 2002 Act. Although that is not an error in itself, in the circumstances of this case it is an error because it is difficult to see how Judge Archer engaged with the statutory public interest considerations. To accept Mr Kumar's arguments requires me to read much into the vague statements made by Judge Archer which can only mean that Judge Archer's reasoning is inadequate. The failure to properly engage with the public interest considerations is an error of law because it undermines the whole of the balancing exercise.
12. In such circumstances it is necessary for me to set aside the decision in relation to article 8 and to remake it. Mr Kumar confirmed there was no further evidence from Mr Abbasi.
13. It is clear from the evidence presented that the appellant failed to meet the requirements of the immigration rules. It is trite law that a "near miss" argument has no relevance in the proportionality assessment. Nor is article 8 to be used as a means to circumvent the immigration rules. The need to maintain effective immigration control means that a robust approach is required or their purpose will be easily defeated. In addition, as I am remaking the decision at today's date, I have to have regard to the fact that Mr Abbasi's immigration status is precarious for the reasons set out in AM. This means little weight should be given to any private life Mr Abbasi has established whilst being in the UK. For these reasons, on the facts in this appeal there is significant public interest in not granting Mr Abbasi further leave.
14. It would be possible for Mr Abbasi to offset the public interest in removing him if he can show that the consequences would be such as to undermine his moral and physical integrity, as described in Nasim and others. Yet he has provided no evidence that comes anywhere near showing that the decision would do any such thing. He complains that to leave his studies would mean he would have wasted the financial and time investment he has made. But as explained by the Upper Tribunal, such arguments carry little weight. Mr Kumar accepted that Mr Abbasi had put forward no other arguments about why his personal circumstances should outweigh the public interest considerations.

15. In addition, I am aware that delay in the application and appeal procedure means that Mr Abbasi will by now have completed his studies in any event. The issue he seems to be putting forward is that the immigration decisions would prevent him staying in the UK for other purposes. However, he has provided no information about his intentions or why it would be disproportionate to expect him to reapply for overseas should those intentions be to return to the UK under other provisions of the immigration rules.
16. It follows from these considerations that the immigration decisions are proportionate and that Mr Abbasi's original appeal must be dismissed.

Decision

The decision and reasons statement of First-tier Tribunal Judge Archer contains an error on a point of law and is set aside.

I remake the decision and dismiss the appeals against the immigration decisions of 3 April 2014.

Signed

Date

Judge McCarthy
Deputy Judge of the Upper Tribunal