



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/09541/2016

THE IMMIGRATION ACTS

Heard at Field House
On 25th May 2018

Decision & Reasons Promulgated
On 5th June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

MR USMAN SHAFIQ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented
For the Respondent: Miss Kiss, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan born on 27th May 1980, appeals with permission against the decision of the First-tier Tribunal (Judge R G Walters) dismissing his appeal against the Respondent's decision of 6th April 2016 refusing to grant him leave to remain in the United Kingdom. The Appellant's claim is that the Respondent's decision breaches his Article 8 ECHR right to family/private life. The appeal against the Respondent's decision is brought under Section 6 of the Human Rights Act 1998.

Background

2. The Appellant entered the UK in 2004 in possession of a student visa. From 2004 to 2009 he was granted further leave to remain. By July 2009 however it is correct to say that despite making various applications, all of which were refused, he remained without leave.

3. On 1st July 2015 he made application in the present appeal, saying that he had now married Mrs Alia Khan Amin, a British citizen with four children. He said they were in a relationship and he acted as a parent to his partner's children. According to Mrs Amin the marriage ceremony was conducted at her home by one of the Appellant's friends asking her three times if she consented to marry the Appellant. She replied "Yes" three times. The Appellant also said he had a son born in the UK from a previous marriage. That child, although born in the UK, is not a British citizen.
4. The Respondent refused the Appellant's application because he could not meet the requirements of the Immigration Rules; in particular his presence here was deemed not conducive to the public good. This is on account of the fact that the Appellant has a number of criminal convictions stretching over a period of time from December 2006 to 16th January 2015. In addition, the Respondent was not satisfied that the relationship with Mrs Amin is a genuine and subsisting one, albeit that a child has subsequently been born of that relationship on 7th April 2017.
5. When the Appellant's appeal came before the First-tier Tribunal, the judge made several findings. In a comprehensively set out decision, the judge found that the Appellant could not meet the requirements of the Immigration Rules nor was he satisfied that the Appellant and Mrs Amin had contracted a valid marriage. Further, it was not shown that there would be significant obstacles to his returning to Pakistan, his country of origin. The judge noted that the Appellant was educated to degree level, was in good health, and even though he had now fathered a child with Mrs Amin nevertheless his credibility was impugned for the reasons set out by the judge in [30 - 33] of his decision. In short, the Appellant had not established his case and accordingly the appeal was dismissed.

Onward Appeal

6. The Appellant sought permission to appeal. The grounds seeking permission are self-drafted and assert the following;
 - (i) The FtTJ erred in taking into account the Appellant's character in that the convictions are "spent". The Appellant was required to undertake unpaid community work and worked for a charity. Therefore he could not be said to be a threat to the community.
 - (ii) The relationship with Mrs Amin is a genuine one and his five children all depend upon him for emotional support.
 - (iii) The FtTJ did not give him an opportunity to make final submissions at the end of the hearing. The Appellant was representing himself.
7. Permission was granted in the following narrow terms by the First-tier Tribunal.

"The decision displays adequate reasoning sustaining the judge's adverse conclusions as to credibility such that he had failed to establish family life. However the ground alleging failure by the judge to afford the unrepresented Appellant any opportunity to make closing submissions constitutes an arguable error of procedure capable of amounting to an error of law."

A Rule 24 response was served by the Respondent. The relevant part of the Rule 24 response reads as follows

“The respondent opposes the appellant’s appeal. In summary, the respondent will submit *inter alia* that the judge of the First-tier Tribunal directed himself appropriately. The Judge states [4] that he heard and recorded submissions from both parties.”

8. Thus the matter comes before me to determine whether the decision of the First-tier Tribunal discloses such error of law that it must be set aside to be remade.

Error of Law Hearing

9. Before me, the Appellant appeared unrepresented. Miss Kiss appeared on behalf of the Respondent. Because the Appellant appeared unrepresented, I outlined to him the procedure to be followed and ensured that he had seen a copy of the grant of permission together with the Rule 24 response. I asked the Appellant to explain to me what it was that he wanted to say. At this point he handed in a witness statement which he had signed and dated 9th May 2018. In addition he handed in a witness statement from Mrs Alia Khan Amin, also signed and dated.
10. I arranged for copies of the statements to be served on Miss Kiss who helpfully said that in the circumstances she had no objection to these documents being admitted as evidence.
11. The Appellant in his witness statement said the following;

“the judge said three times during the hearing that Mr Usman Shafiq had won the appeal and Home Office representative also did not contest it, rather he congratulated us at the end of the hearing. I was confident that the decision was in our favour as the judge said there was no need of my closing remarks at the end as he was already satisfied. We had to wait six months for the decision and upon receiving the decision in post we were shocked to see it as refusal.”

Mr Shafiq then added, before me, that the judge had definitely remarked that there was “no need to make a closing statement.” I asked him if there was anything further that he wished to say, but his further representations went to the merits of his case and disclosed nothing pertinent to the issue before me.

12. I then arranged for Mrs Amin to give evidence. She too had made a witness statement but that statement focuses on the fact that she is heavily pregnant and that she wants the Appellant to live and work in the UK in order to take her and her children out of her present insecurity. I asked her if she could assist me in saying if she was present at the First-tier Tribunal hearing. She confirmed that she attended the hearing, but had left the courtroom after giving her evidence in order to look after her children who had been brought to the court building. It follows therefore that she was not present in the Tribunal room at a time when closing submissions would be made.
13. Miss Kiss addressed and confirmed that there was no note from the Presenting Officer present at the FtT hearing, which would lend weight to the Appellant’s assertion that

he had been congratulated by the Presenting Officer. Further there was no note to show that the judge had announced his decision at the hearing. She said she could only speculate that the Appellant had misunderstood matters, because the judge clearly records at [4] that he heard submissions from both parties.

14. I asked the Appellant if there was anything further to assist me in making my decision. Once again the Appellant referred to the substantive merits of his case.
15. At the end of submissions, I informed the Appellant that I was satisfied that the decision of the First-tier Tribunal contained no material error, and I now give my reasons for this decision.

Consideration

16. I start my consideration with the judge's decision. The judge clearly records under a heading "**The Proceedings**" that he heard oral evidence from the Appellant and from Ms Alia Khan Amin. The judge further records that he heard oral submissions from the Respondent's representative and the Appellant, all of which are "fully set out in the Record of Proceedings and have been taken into account by me." [4]
17. Further at [5] the FtT records, "At the end of the hearing I reserved my decision which I now give with my reasons."
18. The judge's Record of Proceedings is attached to the court file. It is difficult to read and therefore does not assist on the issue of what may or may not have been said during the hearing. However what is clear from the Record is that it stretches from pages from 2- 6, dealing with the evidence and cross-examination of both the Appellant and Mrs Amin. This I find is an indicator that the judge conducted a full hearing.
19. Drawing these threads together, I find no evidence to show that the Appellant was not afforded the opportunity to make final submissions. I am satisfied therefore that the Appellant has had a fair and full hearing before the FtT. He disagrees with this, but I find his Grounds of Appeal amount to no more than a disagreement with the judge's decision.

Notice of Decision

20. The decision of the First-tier Tribunal promulgated on 9th October 2017 contained no material error of law. The decision therefore stands. This appeal is dismissed.

No anonymity direction is made.

Signed

C E Roberts

Date

31 May 2018

Deputy Upper Tribunal Judge Roberts

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

C E Roberts

Date

31 May 2018

Deputy Upper Tribunal Judge Roberts