



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01541/2013

THE IMMIGRATION ACTS

Heard at Field House
On 25 June 2013

Determination Promulgated
On 1 November 2013

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MR ZEESHAN ABBAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Ahmed, Counsel, instructed by 12 Bridge Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a national of Pakistan, was born on 11 July 1979. On 8 October 2010 he applied for leave to remain in the UK, claiming to have arrived in this country on 29 January 1997 without a valid passport. This application was refused

by the respondent on 9 December 2010 and on 19 December 2012 the respondent made a decision to remove him as an illegal entrant, certifying his claim as clearly unfounded. The appellant appealed against this decision and his appeal was heard at Hatton Cross on 25 March 2013 before First-tier Tribunal Judge Broe.

2. In a determination promulgated on 8 April 2013, Judge Broe dismissed the appellant's appeal.
3. The appellant appealed against this decision, and was granted permission to appeal by First-tier Tribunal Judge Pedro on 16 May 2013. In setting out his reasons for granting permission to appeal, Judge Pedro stated as follows:

“... ”

2. The grounds of this application assert, inter alia, that the judge failed to apply the correct burden and standard in relation to the appellant's Article 8 claim and it is unclear from the determination what burden and standard was applied. It is also claimed that the judge incorrectly speculated on the position of the appellant's spouse in light of her accepted status as a refugee in the United Kingdom, thereby giving rise to perverse or irrational findings material to the outcome of the appellant's appeal (for example, finding at para 30 that he did not accept the evidence about any risk faced by the spouse should she return to Pakistan).

...”

4. The appeal then came before me, and I heard submissions on behalf of both parties, which are contained within the Record of Proceedings which I took, in which I attempted to set out everything which was said before me. I accordingly do not intend to repeat what was said to me verbatim in this determination. On behalf of the appellant, Mr Ahmed submitted that Judge Broe had made a finding with regard to evidence which had not been challenged, without giving the witness in question an opportunity of addressing his concern. As a result, he proceeded on an incorrect factual premise, that the appellant had not been here for over fourteen years, which was a factor relevant to proportionality. Also, even though his wife had been recognised as a refugee, the judge effectively revisited the grant of asylum to her without giving her or the appellant a chance to put in further evidence with regard to the risk on return now. There were other matters which were relied upon by Mr Ahmed in his submissions. In particular, at paragraph 21, Judge Broe had rejected the evidence of a Mrs Khan, on the basis that:

“The only witness who claimed to have known him for longer was [Mrs Khan] who, in a statement dated 25 March 2013, said that [s]he had *'known the appellant for sixteen years, I met him in 1998'*. That cannot be right and I am therefore unable to attach significant weight to this evidence.”

Mr Ahmed told this Tribunal that that statement had been written by him, and he had meant to say fifteen years, but the key point was that she had known the appellant since 1998 and she had not been challenged on that.

5. On behalf of the respondent, Mr Tufan accepted that the issue with regard to whether Mrs Khan had known the appellant for fifteen or sixteen years did appear to be a problem. This might be relevant in terms of Article 8.
6. Having listened to the submissions made on behalf of both parties, I found that Judge Broe's determination had contained a material error of law, and I communicated my reasons to the parties. I will set out them out below.
7. Before doing so, it is right that I record my regret that this determination was not given earlier. I indicated to the parties at the hearing, having considered representations, that I considered, for reasons which again I will set out below, that the appeal ought to be remitted to Hatton Cross for rehearing before a different First-tier Tribunal Judge. I obtained a date for the hearing, 4 September 2013, which was agreed with the parties, and dictated my determination and directions.
8. Unfortunately, the file was then mislaid and the tape was lost, and the hearing was vacated.
9. The file has now been located, but unfortunately not the tape which I dictated, but I am able to replicate the reasons I gave for finding an error of law, and also the directions which I gave, which I now do.

Reasons for Finding Error of Law

10. My reasons for finding an error of law are as follows. Judge Broe's reasons for rejecting Mrs Khan's evidence are not sustainable. If the First-tier Tribunal Judge was going to reject this evidence, on the basis he gave, Mrs Khan should have been given an opportunity of dealing with the discrepancy which the judge identified.
11. Further, Judge Broe's finding that the appellant's wife could return to Pakistan with the appellant, even though she had refugee status, was not, in my judgment, adequately reasoned.
12. These errors are material, because they were capable of affecting the proportionality exercise.
13. The appellant wishes to argue that his wife could not return safely with him to Pakistan and it is essentially his case that he did not get a fair hearing with regard to his Article 8 claim. Having regard to paragraph 7 of the Practice Statements for the Immigration and Asylum Chamber of the Upper Tribunal, I consider that the effect of the errors contained within the determination were such that the appellant was deprived of a fair hearing, so far as his Article 8 claim was concerned. I consider further that the nature and extent of the judicial fact-finding which will now be necessary in order for the decision on this aspect of his appeal to be remade is such

that, having regard to the overriding objective, it is appropriate to remit the case to the First-tier Tribunal which I ordered, and shall again order. I shall accordingly make my decision below, and shall also add directions for trial.

Decision

I set aside the determination of First-tier Tribunal Judge Broe as containing a material error of law.

I direct that this appeal now be remitted for a rehearing by the First-tier Tribunal, sitting at Hatton Cross, to be put before any judge other than First-tier Tribunal Judge Broe.

Signed:

Date: 29 October 2013

Upper Tribunal Judge Craig