



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

Appeal Number: IA/46803/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14th November 2014
Prepared 21st November 2014

Determination Promulgated
On 25th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

ASFAND YAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Armstrong (Counsel, instructed by Marks and Marks Solicitors)
For the Respondent: Mr P Armstrong (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a national of Pakistan, he arrived in the UK on the 20th of June 1996 and claimed asylum the following day. That application was refused and his appeal dismissed following which the Appellant failed to turn up for his removal flight in July 1998. The application that forms the basis of these proceedings was made on the 16th of January 1996, it was refused for the reasons given in the Refusal Letter of the 25th of October 2013.
2. The appeal was heard by First-tier Tribunal Judge A Khan at Birmingham on the 22nd of May 2014. In a determination promulgated on the 12th of June 2014 he dismissed the appeal

finding that the Appellant did not meet the requirements of the Immigration Rules and that his claim did not succeed under article 8.

3. The Appellant sought permission to appeal to the Upper Tribunal. It was accepted that the Appellant did not meet the Immigration Rules as they stood on the 8th of July 2012 and that he did not meet the new rules in Appendix FM, paragraph E-LRTP.2.2 in particular. It was submitted that paragraph EX.1 applied. It was submitted that the Judge had misapplied the law, failed to attach proper weight to the Appellant's circumstances, made material errors of fact and findings contrary to the evidence.
4. Permission was refused by First-tier Tribunal Judge Osborne on the 21st of August 2014 on the basis that the application had been made out of time. This was reversed by Upper Tribunal Judge . Permission was granted by Upper Tribunal Judge Chalkley on the 14th of October 2014 on the basis that it was arguable that the Judge may erred in failing to find that the delay in deciding the Appellant's case did not justify considering the Appellant's case outside the Immigration Rules. The submissions are set out in the Record of Proceedings and referred to where relevant below
5. There are 2 errors said to infect the determination. The first is that in paragraph 9 the Judge incorrectly stated the Appellant's wife's details making her 7 years younger than she is and decreasing the time she had spent in the UK. The second is that the Judge incorrectly stated that the Appellant had not pursued his claim whereas there was a letter at page 23 * of the * which showed that he had made efforts to prompt the Home Office.
6. The letter in which it is clear that the Appellant had made efforts to progress his case is not in my view, material. In paragraph 10 the Judge considered the issues and found that the Appellant had not been prejudiced by the delay of the Secretary of State in dealing with his claim. While the judge was wrong to find that the supposed delay cancelled out the Secretary of State's delay is relevant to the life that an individual establishes whilst in the UK which was considered. This is considered further below.
7. With regard to the Appellant's wife's age and time in the UK I find too that this was not material. The fact is the Appellant's wife is a British citizen and that is the basis that the Judge dealt with her, that she had been her nearer to 30 years rather than the 22 years the Judge erroneously stated in paragraph 9 does not affect the overall consideration. The Judge was aware the Appellant's wife had been here for many years and had been naturalised, the errors did not undermine the assessment made.
8. The Judge considered the Appellant's history in the UK including his failure to attend his removal in July 1998 which was clearly relevant and the delays that occurred. He could not satisfy the Immigration Rules by reason of the service of the notice IS151A on him and it was found that the Appellant could return to Pakistan and, in paragraph 9, the Judge found that it would not unreasonable to expect his wife to accompany him to Pakistan for the reasons given including that they must have a common language in which they communicate. This finding was not challenged in paragraph 7 of the grounds where paragraph 9 and incorrect date of birth were addressed. On that basis this is not a case where the Appellant's removal would inevitably entail separation, it follows from the Judge's finding that they can remain together, whether they choose to is a matter for them.
9. Delay does not itself give rise to a right to remain. That right may arise from the private life established during the time that an appellant remains in the UK and the reducing expectation of enforcement that increases with length of time it takes for the Home Office to make a

decision. The determination of Judge Khan shows that all relevant factors were considered by him, the factual errors were not material to findings made. The Judge considered the Appellant's immigration history which, even allowing for his contacting the Home Office, was not good and the fact that his wife was aware of that background. He had no right to remain and no expectation and both knew that.

10. The circumstances of this case are not directly comparable to Chikwamba as the Judge found that the Appellant and his wife could reasonably relocate to Pakistan so there was a finding that family life could continue outside the UK. The Appellant could not meet the former Immigration Rules as he could not show 14 years residence as required and article 8 had to be assessed against the background of the post 9th July 2012 rules, Appendix FM and paragraph 276ADE which he could not meet either. There was not a situation that was not contemplated by the rules, they simply could not meet the requirements.
11. The determination read as a whole shows that the Judge considered all the relevant factors and gave appropriate weight to the different issues and supporting evidence that were before him. The factual errors relating to the Appellant's wife's age and time in the UK and the issue of further submissions were not material to the determination that was made. The determination contains no material error of law.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 24th November 2014