



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number IA/13974/2013

THE IMMIGRATION ACTS

Heard at Field House
On 16 September 2014

Decision & Reasons promulgated
On 29 January 2015

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Faysal Shaikh
(Anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms. M. Dogra of Counsel instructed by Bukhari Chambers Solicitors.

For the Respondent: Ms. J. Isherwood, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge C H Bennett promulgated on 18 June 2014, dismissing the Appellant's appeal against the Respondent's decision dated 12 April 2013 to remove him from the UK.

Background

2. The Appellant is a national of Pakistan born on 29 April 1973. His claimed personal and immigration histories are summarised in the decision of the First-tier Tribunal. It

is unnecessary to set those matters out here: I refer to aspects of the histories as is incidental for the purposes of this document.

3. On 28 June 2012 the Appellant made an application for leave to remain on the basis of long residence, claiming to have remained in the United Kingdom since his entry with the assistance of an agent in 1993. (Home Office records confirmed that he was encountered by immigration officers in May 2007, when he had claimed - inconsistently with his current claim - to have been present in the UK for approximately 11 years.) The application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 12 April 2013, and a Notice of Immigration Decision of the same date was served on 17 April 2013. The Respondent refused the application with reference to paragraph 276B of the Immigration Rules. Regard was also had to paragraph 276ADE (private life) and Appendix FM (family life).
4. The Appellant appealed to the IAC.
5. The appeal was dismissed for the reasons set out in the determination of the First-tier Tribunal.
6. The Appellant sought permission to appeal which was granted by First-tier Tribunal Judge Pooler on 1 August 2014.
7. The Respondent filed a Rule 24 response dated 11 August 2014 resisting the appeal.

Consideration

8. The challenge before the Upper Tribunal is without any factual merit.
9. The First-tier Tribunal Judge made clear and detailed adverse assessments of the Appellant, his supporting witnesses, and his supporting documents.
10. In particular the Judge found:
 - (i) The Appellant not to be a reliable, credible, or truthful witness (paragraph 29). The Judge's reasons for this conclusion were set out in closely reasoned passages over some 6 ½ pages.
 - (ii) The Appellant's claimed partner, Ms Cristina Brooks, not to be a reliable, credible, or truthful witness (paragraph 30).
 - (iii) The supporting witness Mr Bahar Uddin not to be a wholly reliable or credible witness (paragraph 31).
 - (iv) Certain of the documents relied upon by the Appellant, as identified and for the reasons given at paragraph 32, to be deserving of having no weight placed upon them.
 - (v) No weight was to be placed on the pay advices purportedly issued by Lahori Karahi Limited (paragraph 33).

11. The Judge went on to reach the following conclusions at paragraph 34 (before then descending to further specifics as set out in paragraph 35 – which I do not reproduce her):

“34. In the light of the foregoing, and, crucially, because I did not consider the Appellant to be a reliable, credible or truthful witness and in the light of what I have said in relation to the above documents, I am not satisfied that I have been told the truth by him as to

(a) the length of time for which he has been in the United Kingdom; or

(b) when he arrived,

(c) whether he in fact remained in the United Kingdom at all times since his arrival, or

(d) his relationships with [his girlfriend and their children] (other than that he is their father).”

12. The Judge also reached an adverse assessment in respect of the claimed “*subsisting quasi-connubial relationship, or “partnership”*” between the Appellant and Ms Brooks, and in respect of the claimed “*genuine and subsisting parental relationship*” between the Appellant and his two children: see paragraph 36, and the reasons set out at paragraph 37. These conclusions were reached notwithstanding the potentially positive aspects of the evidence as identified and expressly taken into account at paragraph 38. See further in this regard paragraph 39 in the context of the possible application of EX.1 of Appendix FM.
13. Putting aside any issue as to whether the post 9 July 2012 Rules were applicable, in so far as they might have been the Judge’s analysis of the requirements of paragraph 276ADE and of Appendix FM was entirely consistent with his factual conclusions.
14. In the alternative, if the Rules were not applicable and/or a ‘freestanding’ consideration of Article 8 was required outside the ‘old’ Rules, any such consideration was, as identified by the Judge at paragraph 50, appropriately undermined by the conclusion derived from the primary findings of fact that the Appellant had not shown that he enjoyed family life in the United Kingdom with his claimed girlfriend, his children, or any other person: as such the conclusion that his removal would not involve any interference with his or their rights to family life was inevitable.
15. The Judge acknowledged that there would be an interference with the Appellant’s private life, but concluded that this would be proportionate (paragraph 51). Realistically, given the admitted poor immigration history, and more particularly the Judge’s conclusions that the Appellant had not been truthful in his evidence as to the details of his history and had provided supporting documents that could not be relied upon, the public interest in maintaining effective immigration control by a consistent application of published rules inevitably outweighed an uncertain and untruthful presentation of private life by a person who had demonstrably

disregarded the requirements of immigration control, and was prepared to be untruthful before the Tribunal in seeking to gain an immigration advantage.

16. In my judgement the significant adverse findings to which I have referred are clearly set out and explained by the Judge with sustainable reasoning.
17. In as much as the grounds in support of the application for permission to appeal have sought to challenge these findings – and in as much as Ms Dogra has sought to raise further matters in her Skeleton Argument dated 15 September 2014 – the matters advanced are essentially assertions of disagreement and/or attempts to reargue the case: see for example the grounds at paragraphs 5, 8, 9, 12-13, 16-18. I note that the allegation of bias at paragraph 6 of the grounds was expressly not pursued before me, and paragraph 7 is wholly misconceived. Paragraphs 19 and 20 are also misconceived: the Judge gave very careful and particular consideration to the documentary evidence, and plainly had regard to all relevant facts in reaching his decision. In my judgement there is nothing of any substance in paragraph 14 that otherwise undermines the careful reasoning in respect of the facts and issues at the core of the Appellants claim and appeal.
18. The only other argument advanced on behalf of the Appellant in the grounds is that pursuant to the decision in **Edgehill [2014] EWCA Civ 402** the Judge erred in having regard to the ‘new’ Rules (paragraphs 10-11 of the grounds). It is on this point in particular that Ms Dogra has focused in her Skeleton Argument, no doubt encouraged in some small part by its identification as an arguable issue in the grant of permission to appeal.
19. However, for the reasons already given, it is clear to me that even if there were an error in this regard the same outcome on the appeal was inevitable given the findings of fact which have not been successfully impugned.
20. In my judgement, whatever approach is taken to the case – whether by reference to any or all of paragraphs 276B, A277C, 276ADE and Appendix FM as considered by the Respondent in the RFRL, or perhaps more generously or favourably by reference to paragraph 276B of the Immigration Rules and Article 8 of the ECHR as relied upon in the Appellant’s application of 28 June 2012 – and thereby whether with reference to the ‘rule regime’ either before or after 9 July 2012 – the factual findings of the First-tier Tribunal Judge are such that the Appellant has no prospect of demonstrating a basis for the grant of leave to remain.
21. In such circumstances the Respondent’s pleading in aid in the Rule 24 response of the decision in **Amarinder Singh [2014] EWHC 2330 (Admin)** is pertinent. In that case, Mr Justice Nicol found it unnecessary to resolve any possible tension between **Edgehill** and **Haleemudeen [2014] EWCA Civ 558**, because even adopting the approach most favourable to the claimant he could not succeed. So it is, in my judgement, in the instant case.
22. My observations above take into account the submission raised in the Skeleton Argument of Ms Dogra, but not articulated in the grounds in support of the

application for permission to appeal, that the Judge failed to have regard to the best interests of the Appellant's children. It seems to me that in circumstances where the Judge concluded that he was not satisfied that there was a genuine and subsisting parental relationship between the Appellant and his children it is readily understandable why section 55 of the Borders, Citizenship and Immigration Act 2009 was not pleaded in the grounds in support of the application for permission to appeal. Moreover, in this context Ms Dogra was unable to identify any specific supporting evidence as to the children's best interests beyond the generalised assertions made by the Appellant and their mother - both of whom were considered by the Judge to lack credibility, and whose account of a shared family life with their children was rejected. In such circumstances I am not persuaded that the omission of any express reference to section 55, or otherwise to the best interests of children, amounted to a material error on the very particular facts of this case.

23. For completeness I note that the First-tier Tribunal's decision pre-dated the introduction of Part 5A into the 2002 Act by reason of the Immigration Act 2014, and so there is, and can be, no challenge to the absence of reference to sections 117A-117D

Notice of Decision

24. The decision of the First-tier Tribunal Judge contained no material error of law and stands.
25. The appeal is dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis

16 September 2014