



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

Appeal Number: IA/26243/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 March 2015**

**Decision & Reasons Promulgated  
On 25 March 2015**

**Before**

**MR JUSTICE MALES  
DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

**IMRAN IDRIS  
(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms Mohsin, Counsel

For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Mr Imran Idris, is a citizen of Pakistan whose date of birth is 13 August 1990. He made an application to vary his leave as a Tier 1 (Entrepreneur) Migrant on 12 December 2012. That application was refused by the Secretary of State on 20 May 2013 because the appellant was unable to meet the requirements of the Immigration Rules.

2. At the time of that decision the appellant had extant leave. He had been granted leave as a Tier 4 (General) Migrant which was valid until 11 April 2014 and he did not have a right of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act.")
3. He made an application for leave to remain outside the Rules on compassionate grounds on the basis that he had a pending application for judicial review against the decision of the Secretary of State of 20 May 2013. This application was refused by the Secretary of State on 12 June 2014 with a right of appeal. The appellant appealed against the decision of 12 June 2014 and his appeal was dismissed by the First-tier Tribunal (a panel comprising Designated Judge of the First-tier Tribunal D Taylor and First-tier Tribunal Judge Manyarara) in a decision of 24 November 2014 following a hearing on 19 November 2014.
4. The First-tier Tribunal had before them an appellant's bundle which contained the appellant's witness statement. There was also a copy of the appellant's application for judicial review of 17 March 2014. There was a copy of the decision of 20 September 2014 granting permission for judicial review in which it is stated that to continue proceedings a further fee is required or the appellant must make an application for fee remission. A substantive hearing had not been listed and the appellant accepted that he had not paid a fee. In evidence he referred to a letter he had sent to the Upper Tribunal.
5. The First-tier Tribunal dismissed the appeal for the following reasons at [15] of the determination. They found that there were no compelling reasons why the appellant should be allowed to remain outside the Immigration Rules. They found that the appellant was not actively pursuing his judicial review claim and that this claim was (as he confirmed in evidence) the only reason he was seeking leave to remain. They found that the appellant had failed to act on the requirement by the Upper Tribunal that he pay a fee of £700 or make an application for fee remission. The fee was due to have been paid within nine days from the date of the decision on 20 September 2014. They found that at the date of the hearing the appellant had not made any attempt to pay the fee. The panel noted that the appellant had referred to a letter to the Upper Tribunal but that Mr Chohan who was representing the appellant could not confirm the contents of the letter, not whether it existed, because it was not produced.
6. The panel went on to record in their determination at [17] that no submissions were made in respect of the appellant's claim under Article 8 and that there was no evidence in respect of the appellant's family or private life. The panel dismissed his claim under Article 8.
7. The grounds seeking permission to appeal maintain that the judicial review proceedings were pending at the time of the hearing before the First-tier Tribunal and the panel were mistaken in finding otherwise. Permission to appeal was granted by First-tier Tribunal Judge Garratt in a decision of 29 January 2015.

8. We heard oral submissions from the parties. We brought to the attention of the parties that there had been an Upper Tribunal decision of 12 February 2015 that the appellant's judicial review application had failed. We had a copy of this decision and at [14] the judge (Upper Tribunal Judge Coker) recorded that the applicant had sought permission to appeal to the Court of Appeal but she was satisfied that there is no arguable point of law capable of affecting the outcome of the application and refused permission. Miss Mohsin was not aware of this final decision, although she confirmed on instructions that the appellant was aware that the judicial review had been decided against him and told us that he intended to apply to the Court of Appeal for permission to appeal. She also produced Immigration Directorate Instructions (IDIs) of April 2006 (Chapter 1 Section 14) relating to leave outside the Immigration Rules and she argued that the decision maker should have considered the IDI and that there were in this case genuinely compassionate and circumstantial reasons. The decision maker had not considered "circumstantial reasons." However, the "circumstantial reasons" on which she relied amounted to nothing more than the appellant's judicial review claim. Mr Clarke for the Secretary of State maintained that there was no evidence before the First-tier Tribunal that there were pending judicial review proceedings and that there was no error of law, and that in any event those proceedings are now concluded.
9. On the file there is a letter of 23 September 2014 from the appellant to the Upper Tribunal asking for fee remission. There is a letter on the file from the Upper Tribunal of 3 December 2014 that stated that a fee remission had been approved. It is obvious that at the date of the hearing before the First-tier Tribunal the appellant was waiting for a response to the letter of 23 September 2014. However, the letter was not produced and the appellant (who was represented) failed to explain this position to the panel with any clarity. The First-tier Tribunal cannot be criticised for making findings of fact which were in accordance with the evidence which before it. It was for the appellant and his representative to present the appellant's case. It was open to the panel on the evidence to reject the appellant's case that there were at the time pending proceedings.
10. In any event, there are no longer pending judicial review proceedings because these have concluded. The appellant's argument was found in at least one respect to be totally without merit; permission to appeal was refused by Upper Tribunal Judge Coker; and the appellant is out of time for any application to the Court of Appeal for permission to appeal against the decision. He accepts that no such application has yet been made. In these circumstances any error by the First-tier Tribunal would be immaterial.
11. Miss Mohsin maintained that the decision should have been allowed because it was not in accordance with the law because the decision maker had not applied the above mentioned IDI's. This argument was not advanced before the First-tier Tribunal. She referred us to paragraph 2.2 which indicated that the respondent may grant leave outside the rules under a policy or in particular compelling circumstances. It is stated that grants should be rare and only for "genuinely compassionate and circumstantial

reasons.” The argument (that the decision maker made an error because he considered compassionate but not circumstantial reasons) is wholly without merit. There is no additional test of circumstantial reasons and there were no persuasive reasons given or legal authority brought to our attention to persuade us that the IDI was not properly applied by the decision maker. This is a discretion exercised outside of the rules and there is no appeal against such a decision on the grounds that it should have been exercised differently.

12. In our judgment there is no material error of law and the decision of the First-tier Tribunal to dismiss the appeal stands.

**Notice of Decision**

The appeal by the appellant against the decision of the First-Tier Tribunal is dismissed.

No anonymity direction is made.

Signed Joanna McWilliam

Date 23 March 2015

Deputy Upper Tribunal Judge McWilliam