



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

Appeal number: IA/28295/2014

THE IMMIGRATION ACTS

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

**Decision & Reasons Promulgated
On March 20, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MOHAMMAD MUZZAMMIL
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr Tarlow (Home Office Presenting Officer)

DECISIONS AND REASONS

1. The appellant is a citizen of India. The appellant entered the United Kingdom on April 11, 2009 as a work permit holder until February 24, 2014. On February 22, 2014 he applied for indefinite leave to remain as a work permit holder. The respondent refused the application on June 18, 2014 and gave directions for his removal pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006. This application was refused because he failed to satisfy the requirements of paragraph 134 HC 395 and in particular because he failed to provide the specified documents required in

paragraph 134-SD HC 395 to evidence the employer's certification in sub-section (iv) and the reason for the absences set out in paragraph 128A HC 395.

2. The appellant appealed under section 82(1) of the Nationality, Immigration and Asylum Act 2002 on July 7, 2014 and the matter came before Judge of the First-tier Tribunal Dickson (hereinafter referred to as the "FtTJ") on October 1, 2014 and in a decision promulgated on October 14, 2014 he allowed the appeal under the Immigration Rules finding:
 - a. Although the appellant had not received the wages the employer had agreed to pay him £21,000 from December 1, 2013 and it was unfortunate that between December 2013 and June 2014 he was at the old rate thus creating an underpayment.
 - b. The appellant received benefits in kind totalling £7,000 relating to accommodation and other expenses such as heating.
 - c. The appellant had an income of £28,000 since December 1, 2013.
 - d. The appellant produced a letter from his employer explaining his absences as required by paragraph 134-SD HC 395.
3. The respondent lodged grounds of appeal on October 23, 2014. She submitted the FtTJ erred by simply accepting the appellant's oral evidence that salary increase was agreed as evidence that the Rules were met. Whilst the FtTJ relied on the Tribunal decision of Philipson (ILR-not PBS; evidence) India [2012] UKUT 00039 the appellant had not demonstrated any salary increase as no additional wages had been paid.
4. Judge of the First-tier Tribunal McDade granted permission to appeal on December 2, 2014 stating there was an arguable error in law based on the grounds and the matter came before me on January 23, 2015.
5. I found there was an error in law because the FtTJ allowed the appeal on case law that pre-dated the introduction of the paragraph 134-SD HC 395 and the FtTJ should have considered the application in light of the Rules as they applied to what documents had to be submitted. The FtTJ had stated at paragraph [24] of his determination that the appellant had provided the specified documents but it was common ground at the hearing before me that the documents required by paragraph 134-SD were still outstanding in so far as they related to the financial requirements. That Rule specifies what must be provided to meet the Rules. The appellant did not provide the necessary requirement and consequently by allowing the appeal based solely on oral evidence the FtTJ erred in law.
6. Mr Yeo, who represented the appellant at that hearing, asked me to adjourn the case to enable further submissions and in particular for consideration as to whether the appellant had an expectation that he would have been granted indefinite leave to remain as a work permit holder and should be allowed to stay under article 8 ECHR.

7. Having found the error of law I adjourned the matter to the date set out above and gave my reasons for the error of law and the future of conduct of these proceedings in a written determination.
8. At today's hearing neither the appellant nor his representatives were in attendance. Calls were made on two occasions to the appellant's representatives and messages left on an answer phone. The representatives did not return the call prior to calling the case on at 11am-the hearing was listed for 10am. I should also add that no call had been returned by the lunch break at 1pm.
9. A notice of hearing had been correctly sent to both the appellant and his representatives on February 10, 2015 by first class post. The notices have not been returned and I am satisfied both the appellant and his representatives have knowledge of the hearing.
10. Mr Tarlow invited me to deal with the case and I invited his submissions.
11. Mr Tarlow submitted the appellant had still not demonstrated compliance with the Rules and had adduced no evidence to support his article 8 claim. He came here as a work permit holder and whilst he had an expectation of being allowed to remain at the end of five years he would only have had that expectation if he met the Immigration Rules. His private life was work based only and even if article 8 was engaged it was not disproportionate to require him to leave the country.

FINDINGS

12. Since the matter last came before me nothing has happened save the case was listed for a hearing on today's date. I had issued directions on January 29, 2015 that were sent to the parties, including the appellant and his representatives, the same day. This provided for any additional evidence to be served by February 20, 2015. No further evidence was served.
13. With regard to the application under the Immigration Rules I find, in the absence of any further evidence or explanation, that the appellant has not complied with the requirements of paragraph 134-SD HC 395. The reasons I gave in my decision of January 23, 2015 still apply and the failure to provide financial evidence to demonstrate the Rules are met means I must dismiss the appeal under the Immigration Rules.
14. The appellant has failed to demonstrate he would satisfy paragraph 276ADE HC 395. There is also no claim under Appendix FM of the Immigration Rules.
15. As regards any article 8 claim I acknowledge the appellant came to the United Kingdom in April 2009. Since that date he has worked as a work permit holder in a private school. His statement dated October 1, 2014 makes no reference to any other private life. There is no claim of family life.

16. Lord Bingham laid down the test to be applied in Razgar [2004] UKHL 00027. The fact the appellant has worked for over five years in the United Kingdom suggests that he may have some private life but following the decision of Nasim and others (Article 8) [2014] UKUT 00025 (IAC) the Tribunal made clear in paragraphs [20] to [21] of the need to re-focus attention on the nature and purpose of Article 8.
17. I accept a period of work can amount to private life and if the appellant were removed then his ability to undertake this work would be interfered with. However, that interference is in accordance with the law because the appellant has failed to satisfy the requirements of the Immigration Rules (Paragraph 134 HC 395) and removal would be for a reason set out in article 8(2) ECHR.
18. The appellant has lived the majority of his life in India. He has family living there and when his mother was ill he returned to India for short periods. Section 117B of the 2002 Act applies and sub-section (1) makes clear that the maintenance of effective immigration control is in the public interest. Concerns were raised in the substantive application over his level of salary on the basis that he had failed to produce evidence that demonstrated he met the requirements of the Immigration Rules. The fact he was unable to produce suitable evidence of this raises questions about his ability to show he would be financially independent. Non-compliance with the Rules is a major factor to be considered when assessing a claim under article 8. I am satisfied that removing the appellant would not be disproportionate.

DECISION

19. The decision of the First-tier Tribunal did disclose an error in law. I set aside the decision and I dismiss the appeal under both the Immigration Rules and article 8 ECHR.
20. The First-tier Tribunal did not make an anonymity direction pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.

Signed:

Dated: **March 19, 2015**

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT FEE AWARD

No fee award is made.

Signed:

Dated: **March 19, 2015**

Deputy Upper Tribunal Judge Alis