



**Upper Tribunal  
(Immigration and Asylum Chamber)  
Number: IA/00019/2015**

**Appeal**

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
Reasons Promulgated  
On the 4<sup>th</sup> January 2016  
18<sup>th</sup> January 2016**

**Decision &  
On the**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGINTY**

**Between**

**MR HAFIZ RASHID SIDDIQUE  
(Anonymity Direction not made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Mustafa (Solicitor)  
For the Respondent: Miss Savage (Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Wyman promulgated on the 1<sup>st</sup> July 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant him further Leave to Remain as a Tier 4 (General) Student Migrant under the Points Based

System.

## Background

2. On the 3<sup>rd</sup> August 2014, the Appellant made a combined application for Leave to Remain in the United Kingdom as a Tier 4 (General) Student Migrant under the Points Based System and for a Biometric Residence Permit. On the 20th August 2014, the Appellant through his solicitors Messrs Denning Solicitors submitted a letter indicating that the Appellant was in the process of securing admission to at a College and asking for the application to be held until the Appellant had secured a new admission, thereby asking for extra time to secure his admission and provide his CAS letter. However, the letter went on to claim that the Appellant was further seeking to place reliance upon paragraph 276 ADE (vi) of the Immigration Rules, on the basis that it was argued that the Appellant had entered the UK on the 2<sup>nd</sup> September 2005 and had lived in the UK for nearly 9 years and that during that time he had established a private life in the UK due to the duration of the period and strength of his connections here, and that as a result of the length of period he had been here, he had completely integrated into the United Kingdom society and had lost all social and cultural ties in Pakistan.
3. It was further argued that he could be adequately maintained and accommodated in the UK without recourse to public funds and that if his application were considered outside of the Rules, then it would be disproportionate to the legitimate public aim for the purpose of Article 8 (2) of the ECHR and the Respondent was invited to apply the 5 stage Razgar test, in addition to consideration of his Human Rights in respect of his private life under paragraph 276 ADE.
4. Within the decision that was taken on the 3rd December 2014, the Respondent considered the Appellant's application for further Leave as a Tier 4 (General) Student Migrant and found that as he had not provided a valid CAS, he did not meet the requirements of the Immigration Rules. However, that Refusal Notice did not consider the question as to whether or not the Appellant met the criteria

under paragraph 276ADE, that removal would amount to a breach of his Human Rights under Article 8 in respect of his private life, nor was his Human Rights considered outside of the Immigration Rules.

5. The Appellant sought to appeal that decision to the First-tier Tribunal, and that appeal was heard by First-tier Tribunal Judge Wyman on the 1<sup>st</sup> July 2015.
6. Permission to appeal has been granted to appeal to the Upper Tribunal by First-tier Tribunal Judge Osborne on the 30<sup>th</sup> September 2015, on the grounds that it was arguable that the First-tier Tribunal Judge was wrong not to consider the Appellant's Article 8 ECHR claim, when this had been raised in the grounds of appeal to the First-tier Tribunal. Permission was granted to appeal on all grounds contained within the Grounds of Appeal.
7. In his oral submissions on behalf of the Appellant, Mr Mustafa argued that this was a straightforward case and that the Appellant had applied as a Tier 4 (General) Student Migrant, but had varied his application by means of the letter dated the 20<sup>th</sup> October 2014 to include a Human Rights application, and submitted to the Tribunal on that date, a copy of the letter that was said to have been sent to the Respondent by recorded delivery dated the 20<sup>th</sup> August 2014. Seemingly, that letter was not in fact before First-tier Tribunal Judge Wyman, as it was not contained within the Respondent's bundle, nor was it anywhere else within the file.
8. The appeal to the First-tier Tribunal was originally listed as an oral appeal and a Notice of Hearing was sent out on the 24<sup>th</sup> February 2015, listing the appeal for an oral hearing on Tuesday 16<sup>th</sup> June 2015 at 10:00 a.m. at the Richmond Magistrate Court. That direction which was sent to the Appellant and his representatives on the 24<sup>th</sup> February 2015 contained a direction that, inter-Alia that "the Appellant must send copies of all documents to the Tribunal and to the other party, a bundle of all documents you wish to rely upon in support of the appeal. You should clearly identify any essential passages you consider highly significant in your appeal. Copies of documents in a language other than English must be accompanied by a full certified English translation. It is

important that you submit all the documents as soon as they are available, as the Respondent will review all of the evidence you submit before the hearing of your appeal. This could result in their decision being revised in your favour. If this happens, your appeal maybe treated as withdrawn and the hearing cancelled.”

9. However, by letter dated the 3<sup>rd</sup> June 2015, the Appellant's solicitors Messrs Britain Solicitors, noted that the appeal had be listed for hearing on the 16<sup>th</sup> June 2015 at Richmond Magistrates Court, Surrey, but stated that "however, we are instructed by the client that he wish to proceed his appeal on paper hearing instead of oral hearing. We will we will really appreciate if you could please update your record and confirm us in due course". As a result of this request for the case to be considered as a paper hearing, rather than an a oral hearing, the case was considered by First-tier Tribunal Judge Wyman on the papers on the 18<sup>th</sup> June 2015, with his decision being promulgated on the 1<sup>st</sup> July 2015. The First-tier Tribunal Judge therefore considered the appeal on the papers, two days after the date that it was originally listed for an oral hearing.

10. It is argued by Mr Mustafa on behalf of the Appellant that within the Grounds of Appeal to the First-tier Tribunal, it had been specifically argued that at ground 3 "that the decision is in violation of the Appellant's rights under the Convention of Human Rights." And that at ground 6 "that the detrimental effect of the impugned decisions attracts operation of Article 8 of ECHR" and that having raised Article 8 Human Rights and Human Rights arguments within the Grounds of Appeal, it should have been dealt with by First-tier Tribunal Judge Wyman, did not make any findings in respect of Article 8 or Human Rights within his decision. This it was argued mounted to a material error of law such as to mean that the decision of the First-tier Tribunal Judge should be set aside.

11. Mr Mustafa further argued that in his experience when the First-tier Tribunal varies a hearing from an oral hearing to a written hearing, further directions are sent out indicating that any further evidence including statements, skeleton arguments and written submissions, are to be filed by a certain date, but that in this case, no further directions were sent out, and this, it is argued amounted to

a procedural irregularity, and that had directions been sent out, the Appellant would have been in a position to file more evidence in respect of his Article 8 Human Rights claim. It was argued that if the decision was set aside on the basis of a material error of law, that the Appellant would now wish to adduce fresh evidence in respect of his circumstances now and that he wished to claim that he was entitled to remain in the UK on the basis of long residence and seeking indefinite Leave to Remain on that basis.

12. Miss Savage on behalf of the Respondent relied upon her Rule 24 reply, which I have fully taken account of and considered in reaching my decision. She argued that there was no material error of law in that although the Grounds of Appeal referred to Human Rights claims, there were no specific details given in support of an Article 8 claim and that there was no evidence of the Appellant having any family in the UK or of him having established any significant private life within the UK. She argued that the directions had previously been sent out requiring the Appellant to serve any evidence as soon as possible, and that the case was considered on the papers after the date of the original hearing and that the case had been converted from an oral hearing to a paper hearing at the Appellant's own request. She argued that the Appellant had sufficient time to prepare and serve the requisite papers, if he had so desired, but had failed to do so. She argued that there was no unfairness in the procedure and no requirement for the Tribunal to send out further directions.

13. Miss Savage sought to rely upon the case of Sarkar v Secretary of State for the Home Department [2014] EWCA Civ 195 in which she sought to argue that similar Article 8 grounds had been raised in the appeal but there was no evidence of Article 8 and that the Court of Appeal had found that the First-tier Tribunal could consider that the Article 8 case had been abandoned if it was not pursued. She further told me that she sought to rely upon the decision of the Upper Tribunal in the case of MM (Tier 1 PSW; Article 8; "private life") Zimbabwe [2009] UKAIT 00037, as authority for the point that Article 8 does not include a right to work or study per se and that it is the social ties and relationships (depending upon their duration and richness) formed during periods of study or work which were capable of constituting private life for the purpose of Article 8

and that there was no such evidence in this case. She argued that even though the Judge had not considered the Human Rights claim, this was not a material error as there was no basis for the Judge to have found that the decision amounted to a breach of the Appellant's Human Rights under Article 8 in any event.

14. In reply, Mr Mustafa sought to argue that the case of Sarkar could be distinguished, and in that case there had only been a previous application under the Points Based System and not an application made on Human Rights grounds and that within that case the Appellant had been granted two opportunities of arguing that the decision might be a breach of his Human Rights, but had failed to do so. He further sought to argue that in that case the case had been argued at an oral hearing before the First-tier Tribunal where the Human Rights claim had not been pursued. He sought to argue that the Appellant Mr Siddique had been deprived of the opportunity of having his Article 8 claim fairly considered and had been deprived of the opportunity of submitting further evidence in support of his Article 8 claim, before the same was considered by the First-tier Tribunal Judge.

15. I reserved my decision on the question of error of law and materiality.

#### Error of Law and Materiality

16. I do find as a fact that at ground 3 of the Grounds of Appeal to the First-tier Tribunal the Appellant had specifically raised the Human Rights, in that it was there argued that "the decision is in violation of the Appellant's rights under the Convention of Human Rights" and further, he had raised the issue again at ground 6, wherein it was stated that "the detrimental effect of the impugned decisions attracts operation of Article 8 of ECHR". I further find that First-tier Tribunal Judge Wyman was aware that the Appellant was seeking to appeal both on the basis that the decision was not in accordance with the Law and also that the decision amounted to a violation of his rights under the Convention of Human Rights, as was stated by him in [11] of his decision.

17. However, I find that although First-tier Tribunal Judge Wyman was aware that the Human Rights point was an issue within the appeal, nowhere within his decision has he actually considered the Appellant's Human Rights claim. This I find is an error of law.
18. However, it is clear that the contentious issue in the case is as to whether or not that error is material.
19. I reject the argument put forward on behalf of the Respondent by Miss Savage that First-tier Tribunal Judge Wyman could have considered that the Article 8 claim was abandoned, in reliance upon the case of Sarkar v Secretary of State for the Home Department [2014] EWCA Civ 195. In that case the Court of Appeal had stated that the First-tier Tribunal Judge was entitled to have considered that the Article 8 case had been abandoned, as it was not pursued at the oral appeal hearing. However, in this case the appeal did not go to an oral hearing, and the case was considered by First-tier Tribunal Judge Wyman on the papers. Having raised his Human Rights arguments in the Grounds of Appeal, I could find no basis on which it could be said that that ground of appeal had been abandoned when the FTTJ simply failed to deal with the point..
20. However, I find that had First-tier Tribunal Judge Wyman considered the Appellant's Human Rights claim in his decision, he would inevitably have dismissed the appeal on Human Rights grounds. Although it seems to have been accepted by the parties that the contents of the letter dated the 20<sup>th</sup> August 2014, submitted on behalf of the Appellant by Messrs Denning Solicitors was not in fact before the First-tier Tribunal Judge, even if it had been, this would have been the only "evidence" available at that stage, in relation to the Appellant's Human Rights claim. However, this is formally not evidence on behalf of the Appellant himself, it is simply submissions, as it is not a signed statement by the Appellant and is simply submissions on his behalf by his solicitors to the extent that he did meet the requirements of paragraph 276 ADE (vi) on the basis that he had lived in the UK for nearly 9 years and had established a private life in the UK due to the duration of the period and strength of connections and that he had completely integrated in the UK and

lost all social and cultural ties in Pakistan and that further the decision would be disproportionate to the legitimate public aim if the case was considered for the purposes of Article 8 outside of the Immigration Rules, and that the Appellant could be adequately maintained and accommodated in the UK without recourse to public funds. However, there was in fact no evidence from the Appellant before First-tier Tribunal Judge Wyman, in this regard. There was no statement from the Appellant or others, nor any documentation to prove that he had no ties including social, cultural or family within Pakistan to which he would have to go if required to leave the UK for the purposes of paragraph 276 ADE (vi), nor was there any statement of documentary evidence to show that he could be adequately maintained and accommodated in the UK without recourse to public funds if the case were to be considered outside of the Immigration Rules for the purpose of Article 8, as suggested within the letter of the 20<sup>th</sup> August 2014. These are bold assertions by the solicitors, and did not amount to evidence, even if in that letter had been before the Judge and the Judge would not have been entitled to place weight upon it as being evidence that in fact the Appellant had no family, social or cultural ties with Pakistan or as evidence to prove that the decision was disproportionate to the legitimate public aim sought to be adduced, if the case was considered outside of the Rules.

21. It was argued on behalf of the Appellant by Mr Mustapha that there was a procedural irregularity in that the First-tier Tribunal had not sent out further directions upon the case being changed from an oral appeal to a paper appeal, giving the Appellant the right to submit further documentation including statements, skeleton arguments and written submissions, which it is argued is the First-tier Tribunal's usual practice, and that thereby the Appellant was deprived of the opportunity of presenting his case fully and deprived of the opportunity of having a fair hearing. However, Mr Mustafa was unable to point me to any Rule within the First-tier Tribunal Procedure Rules 2014 requiring the Tribunal to send out further directions permitting further witness statements or documentary evidence to be filed, skeleton arguments or written submissions, in circumstances where the basis of the appeal changed from an oral appeal to a paper appeal. Although in his submission he has not come across any case where the Tribunal had not done so, there was in fact no evidential basis to



support such an assertion, as clearly he is not in a position to give evidence on this point, and he was unable to point me to any case, statute, procedural rule or practice direction, which mandated a further set of directions to be issued in such circumstances.

22. In this regard, it is highly relevant that the Tribunal had already sent out on 24<sup>th</sup> February 2015, both to the Appellant and his representatives, in the original appeal hearing, directions requiring the Appellant to send copies of all documents to be relied upon as soon as available, and yet between the 24<sup>th</sup> February 2015 and the 18<sup>th</sup> June 2015, no statement or other documentary evidence in respect of the Appellant's Article 8 claim was filed and served on behalf of the Appellant. Nor did the Appellant through his solicitors when asking for the case to be considered on the papers, ask for further time to submit any such evidence, and again it is significant that he did not seek to submit any such evidence with the request for the case to be considered on the papers. Simply requesting the case to be considered on the papers as opposed to being listed for oral hearing, did not, in my judgement, require the Tribunal to then send out further directions indicating that evidence must be filed, when the Tribunal had already sent out directions requiring the filing of evidence. The appeal was further not even considered until 2 days after the date that the oral appeal would have been considered, such that it cannot realistically be suggested that the change in the date when the appeal was considered, led to such evidence not being filed. In such circumstances, I therefore do not accept that there is any procedural irregularity on part of the First-tier Tribunal, in not sending out further directions.

23. In such circumstances, even if First-tier Tribunal Judge Wyman had considered the Article 8 claim of the Appellant within his decision, I find that there was no evidential basis before him upon which he could have found in the Appellant's favour on Human Rights grounds. The Appellant had not submitted any statement or evidence in support of his Human Rights claim, and even though the First-tier Tribunal Judge did not have a letter from the solicitors dated the 20<sup>th</sup> August 2014, this in itself was not "evidence", as it was not a signed statement on behalf of the Appellant, and simply contained bold assertions that

he had no social or cultural ties to Pakistan and that he could be adequately maintained and accommodated in the UK without recourse to public funds. This would not have been a sufficient evidential basis to have found in the Appellant's favour, in any event.

24. I further bear in mind as argued by Miss Savage on behalf of the Respondent that in light of the case of MM (Tier 1 PSW; Article 8; "private life") Zimbabwe [2009] UKAIT 00037, that whilst respect for private life in Article 8 does not include a right to work or study per se, it is the social ties and relationships (depending upon their duration and richness) formed during periods of study or work which are capable of constituting private life for the purpose of Article 8. The fact that the Appellant had therefore been in the UK previously studying did not in itself prove the social ties and relationships which he had formed during his almost 9 years in the UK by the date of the decision, such as to amount to a significant private life which would be a disproportionate interference with as a result of the decision reached. There was therefore before the First-tier Tribunal Judge no evidence that the Appellant had any family within the UK, and no evidence in terms of any statements or other documentary evidence to show that the Appellant had no ties to Pakistan including social, cultural or family for the purpose of paragraph 276 ADE (vi); no evidence as to the strength of the social ties or relationships formed by him during his time in the UK, and no documentary evidence to show that he was able to be adequately maintained and accommodated in the UK without recourse to public funds, other than the fact that his accommodation and maintenance must have been considered previously when granting his previous Leave. His claim under paragraph 276ADE would therefore have failed in any event.

25. Nor was there evidence of any compelling, exceptional or other circumstances not dealt with by the Immigration Rules, which should have led to the First-tier Tribunal Judge considering the Human Rights claims outside of the Immigration Rules under the 5 stage Razgar test, and even if he had done, there was no evidence upon which the First-tier Tribunal Judge could have found that the decision was disproportionate to the legitimate public aim sought to be achieved. There being no evidential basis for a finding in the Appellant's favour

before First-tier Tribunal Judge Wyman in respect of the Human Rights claim, the failure of the Judge to consider this claim, I find was not material.

26. In such circumstances given that the decision of the First-tier Tribunal Judge does not therefore disclose a material error of law, in that the error of law I find was not material to the outcome. The decision of First-tier Tribunal Judge Wyman is maintained and stands.

27. I remind myself that as and until a material error of law is found, there is no basis upon which the Upper Tribunal can hear further fresh evidence regarding the Appellant's circumstances now, and that even though it is contested that the Appellant's circumstances have now changed in that it is alleged that he now meets the requirements for long residence, the decision of First-tier Tribunal Judge Wyman not containing a material error of law and being maintained, I am not in a position to consider any change of circumstances relevant to the Appellant's case.

#### Notice of Decision

The decision of First-tier Tribunal Judge Wyman not disclosing a material error of law is maintained;

No anonymity order was sought before the First-tier Tribunal, nor was any such order sought before me. No anonymity order is therefore made.

Signed

Dated 4<sup>th</sup> January 2016

*RF McGinty*

Deputy Upper Tribunal Judge McGinty