



**Upper Tribunal
(Immigration and Asylum Chamber)**
OA/04404/2015

Appeal Number:

THE IMMIGRATION ACTS

Heard at North Shields

**Decision &
Promulgated**

Reasons

On 5 July 2016

On 8 July 2016

Prepared on 5 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

**A. A.
(ANONYMITY DIRECTION MADE)**

Appellant

And

ENTRY CLEARANCE OFFICER ISLAMABAD

Respondent

Representation:

For the Appellant: Ms Brakaj, Solicitor, Iris Law

For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan who was removed from the UK on 19 June 2013 after his appeal rights were exhausted against the decision to remove him by reference to s10, following the refusal of his asylum claim.
2. Following the Appellant's removal both his mother and brother were successful in asylum appeals to the Tribunal against removal decisions made in relation to them, following a decision of Designated Judge Zucker of

26 November 2013. I am told that the Respondent did not seek to challenge that decision before the Upper Tribunal, and I am told that their claims to asylum essentially mirrored that pursued by the Appellant.

3. Although the Appellant did not make an application for entry clearance based upon Appendix FM, or pay the fees due for such an application, he did lodge an application for entry clearance which was treated by the Respondent as an application under paragraph 352D of the Immigration Rules. That application was refused on 30 January 2015.
4. The Appellant duly appealed against the decision to refuse his application. His appeal was heard by Judge Manchester, and it was allowed on Article 8 grounds in a decision promulgated on 28 October 2015.
5. The Respondent's application to the First Tier Tribunal for permission to appeal was granted by First Tier Tribunal Judge Parkes on 29 April 2016.
6. Thus the matter comes before me.

The decision under appeal

7. It is not in dispute before me that Judge Manchester correctly dismissed the appeal under the Immigration Rules. It is accepted before me that the Appellant could not meet either the requirements of paragraph 352D, or, Appendix FM.
8. The context in which Judge Manchester approached the Article 8 appeal was on the one hand the undisputed family relationship between the Appellant, his mother, and brother, and on the other, their success in their asylum appeals before the Tribunal after his own removal from the UK despite the fact that all three had offered to the Respondent essentially the same explanation as to why they believed themselves to be at risk of harm in Pakistan. As his decision makes clear, Judge Manchester had at the forefront of his thinking both the decision made in relation to the Appellant's appeal, and the decision made in relation to his mother and brother's separate appeal.
9. There is therefore, as Mr Diwnycz now accepts, quite simply no merit in the first ground which asserts that the Judge failed to take the decision made in relation to the Appellant's own appeal as his starting point when considering the evidence before him. It is plain that this is precisely what the Judge did do. That decision was not a "trump card", although the draftsman of the grounds appears to seek to elevate it to such a status.
10. Equally, the Judge did not fall into the trap of refusing to look at the Appellant's relationship with his mother and

brother as part of the Appellant's "private life" at the date of decision He did not treat those relationships as "family life", and he bore in mind that the only reason the Appellant had been in Pakistan for the last two years and unable to pursue first hand those relationships was the inconsistent approach that had been taken to the Appellant on the one hand, and his mother and brother on the other.

11. Before me Mr Diwnycz very fairly accepted that this was the case, and in consequence that there was in reality no substance to either of the grounds. Accordingly the grounds disclose no arguable error of law in the Judge's decision, and it follows that, despite the terms in which the grant of permission to appeal was framed, this is a challenge that must be dismissed.
12. That being the case Ms Brakaj raised the issue of costs at the conclusion of the hearing. Whilst I am content to confirm the fee award made by the First Tier Tribunal, I am not satisfied that at this stage the Upper Tribunal can, or should, do any more. No written application for costs has been made pursuant to Rule 10(5), and no schedule of the Appellant's costs has been prepared which would permit a summary assessment to be undertaken. Although it would appear that Ms Brakaj may advise the Appellant to pursue an application based upon the assertion that the Respondent had acted unreasonably in seeking permission to appeal and in then pursuing the appeal to the Upper Tribunal, the matter is not straightforward because there was after all a grant of permission to appeal that was made in the Respondent's favour. I decline therefore to make any order pursuant to Rule 10(5).

DECISION

The Determination of the First Tier Tribunal which was promulgated on 28 October 2015 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed, as is the fee award made by the First Tier Tribunal.

Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead

to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes
Dated 5 July 2016