



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

Appeal Number: IA/00402/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd November 2017**

**Decision & Reasons
Promulgated
On 6th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR. MUHAMMAD INAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Miss Z Ahmad, Home Office Presenting Officer

For the Respondent: Mr. Sparling, Counsel instructed by Goodfellows Solicitors

DECISION AND REASONS

1. The appellant before me, is the Secretary of State for the Home Department. However, for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this decision, refer to Mr. Inam as the appellant and the Secretary of State as the respondent.

2. The appellant is a Pakistani national who appealed to the First-tier Tribunal (“FtT”) against a decision of the respondent dated 8th January 2016 refusing his application for leave to remain in the UK under the immigration rules.
3. In her decision, the respondent noted that the appellant entered the United Kingdom on 3rd May 2007 following a successful appeal against a decision to refuse his application for leave to enter as a student. The appellant arrived in the UK with leave to enter until 8th March 2009. He was subsequently granted further leave to remain in the UK as a Tier 4 student until 31st July 2013. On 13th February 2015, the appellant applied for leave to remain under the Family and Private life 10-year route. That application was initially refused on 18th March 2015, but that decision was withdrawn by agreement between the parties, following a claim for Judicial Review. By her decision of 8th January 2016, the respondent refused the application for leave to remain in the UK under the immigration rules, and it was that decision that was the subject of the appeal before the FtT.
4. The appeal was heard by First-tier Tribunal Judge Majid on 1st February 2017, and allowed for the reasons set out in a decision promulgated on 16th February 2017.
5. Permission to appeal was granted on 31st August 2017 by First-tier Tribunal Judge Davies noted that the decision is incoherent and the Judge has not addressed the issues, or the evidence that was before him, in a clear and lucid manner.
6. Before me, Miss Ahmad relied upon the grounds of appeal and submits that the FtT Judge has failed to address the appellant’s case by reference to the immigration rules. The decision of the FtT Judge lacks any proper findings, and the reader is unable to discern from the decision, the basis upon which the Judge concluded that the appeal is allowed. The Judge fails to identify the rules that were in his mind when considering the

evidence, and he fails to set out the conclusions that he reached upon the material issues in the appeal.

7. Mr Sparling, on behalf of the appellant, in succinct submissions, has tried to persuade me that this is a decision that is capable of standing, and does not disclose a material error of law. He submits that the issue in the appeal is whether the requirements of the immigration rules are met, and the central issue was whether the 'insurmountable obstacles' test is met. He submits that the parties are entitled to presume that the F&T Judge is competent to hear the appeal, and that as a specialist Tribunal, the F&T Judge had in mind the relevant immigration rules. Mr Sparling submits that as the central issue in the appeal was whether the 'insurmountable obstacles' test is met, one can presume that that was the issue being addressed by the Judge. He accepts that at paragraphs [11] to [14] of the decision, the Judge does not refer to the 'insurmountable obstacles' test, or even make reference to the words 'insurmountable obstacles'.
8. I have very carefully read the decision of the F&T Judge and whilst the judge appears to note at paragraph [3] of his decision that he has had in mind the relevant paragraphs of the Immigration Rules, it is far from clear from a careful reading of the decision, what if any of the Rules, the Judge was in fact considering. Without being able to discern from the decision, which of the Immigration Rules the Judge had in mind, I cannot be satisfied that the Judge applied the relevant rules(s) correctly. The Judge appears to refer to some of the evidence that was given before him in the decision, but even if I were to accept Mr Sparling's submission that the judge was addressing his mind to the test which is set out in paragraph EX.1 of the Immigration Rules, that is, whether there are any insurmountable obstacles to the appellant's family life with his partner continuing outside of the United Kingdom, the matters that are set out at paragraphs [11] to [14] of the decision, could not, in my judgement have come anywhere near meeting that test. There is a test of hardship which the Judge simply does not appear to address. In none of those paragraphs, when

considering the evidence before him, does the Judge refer to the 'insurmountable obstacles' test.

9. Having carefully considered the submissions that are made by Mr Sparling doing the best he can on behalf of the appellant, I have no hesitation in finding that there is a material error of law in the decision of the FtT Judge. In my judgment, the decision fails to set out the issues, if any, that were considered by the Judge, and although the Judge appears to refer to some of the evidence before him, the decision is devoid of any proper reasoning at all. As noted when permission to appeal was granted, the decision is incoherent. It is littered with irrelevant considerations and fails to deal adequately or at all, with the material issues in the appeal.
10. I have no hesitation in finding that there is an error of law in the determination of the FtT. The determination of the FtT is set aside and the appeal remitted to be remade entirely *de novo* in the FtT. I can discern no coherent findings of fact having been made by FtT Judge Majid, but for the avoidance of any doubt, no findings are preserved.

Notice of Decision

11. The appeal is allowed and the appeal is remitted to the First-tier Tribunal for a fresh hearing of the appeal.
12. No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mandalia

Date

29th November 2017

TO THE RESPONDENT **FEE AWARD**

The appeal before me has been allowed. The matter has been remitted to the First-tier Tribunal for a fresh hearing of the appeal, and I make no fee award.

Signed
Deputy Upper Tribunal Judge Mandalia

Date

29th November 2017