



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12055/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 15th May 2018

Decision & Reasons Promulgated
On 12th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR IFTIKHAR AHMED MUGHAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Timson (Counsel)

For the Respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge N M Paul, promulgated on 25th October 2017, following a hearing at Taylor House on 2nd October 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, and was born on 2nd October 1971. He appealed against the decision of the Respondent, dated 6th May 2016 refusing his application for indefinite leave to remain in the UK on the basis of ten years' continuous lawful residence in the UK.

The Appellant's Claim

3. The essence of the Appellant's claim is that, having entered the UK as a student in 2005, and subsequently securing various extensions of leave to remain until 2011, he applied for a post-study migrant visa which was granted until 21st February 2013. Thereafter, his Tier 1 (Entrepreneur) application was refused in November 2013 and he became appeal rights exhausted in September 2014. He has always tried to do his best in the UK, and has stayed legally throughout, and has developed social, cultural and economic, as well as educational ties in this country, and completed ten years' continuous lawful residence in this country. He has invested £50,000 in his business in the UK and does not accept that the refusal of his application means that his business activities were not genuine.

The Judge's Findings

4. The evidence before the judge was that the Appellant, who comes from Kashmir in Pakistan, has two children, aged 10 and 7 there, who live with his wife and his parents, and the Appellant's brother also has business interests there. In cross-examination before Judge Paul, the Appellant accepted "that he had no real family in the UK" (paragraph 7). In terms of the work that the Appellant was undertaking in the UK, the evidence before the judge was that, "He was not able to do anything since he became appeal rights exhausted. He lives with his uncle in the UK, and is dependent upon him" (paragraph 8). When asked why he could not return back to Pakistan, to be with his wife and children, the Appellant had said that "he had business debts" (paragraph 9).
5. The judge found that the Appellant did not meet the requirements of the Immigration Rules on a balance of probabilities. Although he had continuous leave from August 2005 until September 2014, his Section 3C leave had ceased at that date, and when he had applied in October 2014, he was outside the period of his leave, and therefore became an overstayer since 2014, such that he had not been able to demonstrate the ten years' continuous residence. The judge went on to say that even though the Appellant did not meet the requirements of the Immigration Rules, "In the event that he does not, it is still open for an Article 8 assessment to be carried out if there are any such factors which make it plain that any consideration under Appendix FM and 276ADE was incomplete" (paragraph 14).
6. The judge held that "It is conceded on his behalf that he cannot meet the requirements of 276ADE", but that "The appeal has been pursued on the basis that, because he has been in the country for nine years due to his striving to make any connection with this country, that he should therefore be allowed to remain" (paragraph 15). However, Judge Paul did not consider this to be an argument that was tenable because "He has very close family ties with Pakistan and indeed, according to his evidence, that is where all his finances come from" (paragraph 16). Although the Appellant claimed to have incurred financial problems by remaining in this country, "He has not established anything here that would amount to family life which would make it disproportionate for him to return to Pakistan" (paragraph 16).

7. In the final conclusion reached by the judge, it was held that, "There is no merit in any alternative Article 8 assessment, as I am satisfied that all the relevant factors in this case are properly contained within the Rules" (paragraph 17).
8. The appeal was dismissed.

The Grant of Permission

9. On 15th January 2018, permission to appeal was granted by the Upper Tribunal on the basis that, even though the judge was entitled to conclude (at paragraph 14) that the Appellant could not meet the requirements of paragraph 276ADE, and had not shown ten years' continuous lawful residence in this country, it was arguable that the judge did err in not considering Article 8 outside the provisions of the Immigration Rules and that "Permission to appeal is granted on that ground alone".

The Hearing

10. At the hearing before me on 15th May 2018, Mr Timson, appearing as Counsel on behalf of the Appellant stated that the Appellant was entitled, in view of the evidence set out at pages 1 to 47 of his bundle, to have that material engaged with, in any consideration of Article 8 ECHR, and the judge was in error in simply stating, without any reasons being provided, that "There is no merit in any alternative Article 8 assessment" (paragraph 17).
11. For his part, Mr McVeety, appearing on behalf of the Respondent Secretary of State, conceded that the judge had not engaged with Article 8 and carried out a proper assessment of the Appellant's situation outside the Immigration Rules, and that this was clear in his final statement that "I am satisfied that all the relevant factors in this case are properly contained within the Rules" (paragraph 17).

No Error of Law

12. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. I come to this conclusion notwithstanding Mr Timson's careful and well-argued submissions before me. My reasons are as follows.
13. This is a case where the Appellant in evidence conceded that "he had no real family in the UK" (see paragraph 7). He lived with his uncle. He was dependent on his uncle. What he did have in the UK was his "business debts" (paragraph 9). This is also a case where his representative appearing on his behalf at the hearing, had expressly conceded that the Appellant could not satisfy the requirements of paragraph 276ADE. The question then is whether the judge's approach was flawed in considering his Article 8 private and family life rights, both within the Immigration Rules, and outside the Rules.
14. I find that the judge had absolutely at the forefront of his mind the proper approach that he was required to follow. Indeed, under the heading "Conclusions and Reasons" the judge began at the outset with the statement that "It is still open for an Article 8 assessment to be carried out if there are any such factors which make it plain that any consideration under Appendix FM and 276ADE was incomplete" (paragraph 14).

15. In assessing the Appellant's situation, the judge was aware that on the one side was his lack of family life in the UK but on the other side, there was his "very close family ties with Pakistan" (paragraph 16). The judge was also aware, that in terms of the Appellant's private life, on the one side there was his "business debts" (paragraph 9), but that on the other side all his finances came from Pakistan (paragraph 16).
16. Mr Timson has sought to strenuously argue before me that a consideration of the Appellant's evidence in the bundle at pages 1 to 47 would have materially affected the Article 8 outcome. Mr Timson has specifically asked me to have regard to the material from pages 35 onwards. However, whereas there is a certificate of incorporation of a private limited company (at page 39).
17. The fact is that the accountant's report from Mughal & Co (pages 40 to 41) is devoid of all substance. Indeed, the Company Register Information (at page 42) specifically states "no accounts filed" and with regard to "nature of business" it goes on to say "none supplied".
18. The question then is whether the judge did indeed avoid having to look at Article 8 outside the Immigration Rules. He did not. There is longstanding jurisprudence to confirm that the approach taken by Judge Paul was correct when he stated that, "there is no merit in any alternative Article 8 assessment, as I am satisfied that all the relevant factors in this case are properly contained within the Rules" (paragraph 17).
19. In **Khalid [2015] EWCA Civ 74** the Court of Appeal confirmed the correctness of the two-stage approach explained in the judgment of Sales J in **Nagre [2013] EWHC 7200**. The correct test is whether there are compelling circumstances not sufficiently recognised under the Rules to require a grant of leave outside the Rules on the basis of Article 8. If not, it is sufficient to say so and there is no need to make a full assessment of Article 8 outside the Rules.
20. The correct approach was also explained in the case of **SS (Congo) [2015] EWCA Civ 387**. In general, compelling circumstances would need to be identified, which was lower than the test of exceptional circumstances.
21. In this case, it was clear that Judge Paul found there to be no compelling circumstances. It was sufficient, bearing in mind that the judge had the Article 8 assessment issue in the forefront of his mind at paragraph 14 of the determination, for him to go any further.

Notice of Decision

22. There is no material error of law in the original judge's decision. The determination shall stand.
23. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

8th September 2018