



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/01998/2016

THE IMMIGRATION ACTS

Heard at Field House
On 15 March 2018

Determination Promulgated
On 01 May 2018

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

MR FAISAL KHAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr Nath

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born in 1984.
2. He arrived in the UK in April 2008 with leave and was granted further periods of leave until 28 October 2014. On 16 October 2014 he sought further leave to remain as a Tier 4 (general) student migrant. However, this was refused in a decision dated 12 April 2016.
3. The reason for refusal was that the Confirmation of Acceptance for Studies (CAS) that he had submitted with his application by Oxford College, London was invalid. A check by the respondent with the Tier 4 Sponsor Registrar indicated the college was not listed as a sponsor. The appellant was informed of this on 2 February 2016

and was allowed 60 days in order to obtain a new sponsor and CAS but he had not done so and thus did not meet the requirements of the Rules.

4. He appealed.

First tier hearing

5. Following a hearing at Hatton Cross on 27 September 2017 Judge of the First-Tier Choudhury dismissed the appeal.
6. The appellant had asked for the case to be dealt with 'on papers'. In fact, it was dealt with as a hearing in absence.
7. In a brief decision the judge noted that it appeared to be accepted by the appellant that he did not have a valid CAS. As such he could not satisfy the Immigration Rules.
8. The judge ended by noting that it was alleged that the respondent's decision was a disproportionate breach of his private life under Article 8. However, the judge found that she had "not had the benefit of any documentation or evidence (for example) ... any witness statements) from the appellant demonstrating any Article 8 private life in the UK". She concluded that she could not find that there is any private life in the UK.
9. He sought permission to appeal which was granted on 18 December 2017.

Error of law hearing on 6 February 2018

10. At the hearing on 6 February, at which the appellant was represented, I found no merit in what appeared to be a submission that the judge erred in failing to find that the respondent acted unfairly in not giving the appellant yet more time to try and get a CAS. However, I found error in that the judge failed to have regard to a bundle which was received by the Tribunal on 27 September 2017. Whilst it had no relevance to the claim under the Rules for which the judge's decision was unassailable, the bundle contained a witness statement in support of his claim to show private life in the UK.
11. In failing to consider material evidence the judge erred.
12. I set aside the decision but only to the extent that the Article 8 aspect be reheard. The decision under the Rules stands.
13. It was indicated by counsel that he was not ready to proceed to rehearing on that day. I adjourned the matter to the resumed hearing date on 15 March.

Resumed hearing

14. On that date the appellant appeared alone although he said his solicitors were still on record.
15. I invited him to say anything he wished in support of his Article 8 claim. He indicated he was not seeking to lodge any up-to-date statement or any other items. He gave brief evidence.
16. Having done a Master's Degree in Pakistan he came to the UK seeking practical study. He achieved an MBA in 2012. He then wanted to pursue an M.Phil with a view eventually to working in a technology company, but following the revocation of the Oxford College, London, licence he was not able in the time available to get an offer. Such had been beyond his control. He had lost £2,000 in fees paid to Oxford College.
17. Asked how he supported himself he said he worked in a shop for 20 hours a week. It was enough to get by. A brother in the UK met his other, more major, costs.
18. He added that he had married in October 2017, a woman originally from the Philippines who works as a housekeeper. She has indefinite leave to remain.
19. Asked about family in Pakistan he said his parents and various siblings are there. Asked if his wife would go with him to Pakistan if he was required to leave he said he thought she would.
20. In brief submissions Mr Nath accepted that the appellant in the years he had been here had established a private life. However, having come here to study he had achieved his goal. He now has ample qualifications which would benefit him on return.
21. Mr Nath added that no evidence of the marriage had been provided. In any event the evidence was that his wife would go with him to Pakistan to continue their family life.
22. Mr Nath added that as the appellant had nearly achieved ten years continuous lawful residence a different application might be more appropriate. The appellant had nothing to add.

Consideration

23. In considering this matter I see no reason to doubt the credibility of the appellant. He came across as a patently truthful witness. I am satisfied that in October 2017 he married as claimed a lady from the Philippines who has ILR.
24. I find that he has family life here with his wife albeit a very recently established family life. There are no children.

25. I find also (and, as indicated, it was not disputed) that he has established a private life here not least because he has spent nine years here, a point he emphasised in the statement lodged for the First-Tier hearing. Apart from his studies there was little indication of any wider activities beyond study during that period.
26. I find that his removal would not be an interference with his right to family life because he indicated that his wife would go with him if he asked her to do so.
27. I find that his removal would be an interference with the exercise of his right to respect for his private life and to have consequences of such gravity as to engage Article 8. Such interference is in accordance with the law and is necessary in a democratic society in the interests of the economic wellbeing of the country.
28. In considering proportionality the starting point is paragraph 276ADE 'Requirements to be met by an applicant for leave to remain on the grounds of private life'.
29. Paragraph 276ADE(1) states the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

 ' ...

 (vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years ... but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.'
30. The appellant does not come close to showing that he would face very significant obstacles if returned to Pakistan. He would be returning to the country where he has spent the majority of his life. He would be returning with post-graduate qualifications which it is reasonable to assume would give him an excellent opportunity to get accommodation and employment and be able to support himself and his wife.
31. He faces no language difficulties. There are no medical issues. He has close family there who would no doubt be able to give support as necessary.
32. He cannot succeed under paragraph 276ADE(1)(vi).
33. Under section 117B of the Nationality, Immigration and Asylum Act 2002 I give little weight to private life established when his immigration status was precarious. His ability to speak English (section 117B(2)) is a neutral factor. He is not financially independent (section 117B(3)).
34. I see no exceptional circumstances, that is to say, circumstances in which refusal would result in unjustifiably harsh consequences for the appellant such that refusal

would not be proportionate. The appeal cannot succeed under Article 8 outside the Rules.

35. In summary, having considered the balancing exercise and giving due weight to the public interest in removal, I find that the Article 8 claim is nowhere near sufficiently strong to outweigh it.
36. The Article 8 appeal fails.

Notice of Decision

The decision of the First-Tier Tribunal in respect of Article 8 ECHR shows material error of law.

That decision is set aside and remade as follows:-

The appeal is dismissed on human rights grounds (Article 8).

No anonymity order made.

Signed

Date: 30 April 2018

Upper Tribunal Judge Conway