



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

Appeal Number: HU/01373/2017

THE IMMIGRATION ACTS

Heard at Field House

On 3rd January 2019

**Decision
Promulgated**

On 04th February 2019

&

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**OKAIL [S]
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Dingley (Counsel)

For the Respondent: Mr T Lindsay (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Dhanji, promulgated on 7th September 2018, following a hearing at Hatton Cross on 1st August 2018. 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 Syria, and was born on 21st September 1993. He appealed against the decision of the Respondent Secretary of State, dated 4th January 2017, refusing his application for further leave to remain on the basis of his private life in the United Kingdom.

The Appellant's Claim

3. The Appellant had originally arrived in the United Kingdom on 9th February 2012 as a student, and his leave was valid until 13th May 2014. He was granted further extensions of stay until 30th January 2016, and thereafter he made further applications again on 27th May 2016, which was refused on 4th January 2017. The Appellant claimed never to have worked. He had ambitions to study. He had undertaken HND course in business law and then had enrolled at Greenwich University for a BA in business management, but he was experiencing emotional difficulties, and was diagnosed with moderate to severe clinical depression, he managed to complete his BA and then decided to undertake an MBA. As a result of his depression he was unable to complete this. He now wished to re-enrol and maintained that he had been accepted for a September 2018 start date to finish his MBA. He had returned to Syria some three or four times. The position of universities in Syria was dire although they still manage to function in some respect with the ongoing violence and instability around them. He did not consider the option of pursuing his studies in Syria to be a viable one in the circumstances.

The Judge's Findings

4. At the hearing before Judge Dhanji, consideration was given to the Respondent Home Secretary's position that the Appellant could not succeed under the private life route, because he could not meet paragraph 276ADE(1)(vi) in that it was not accepted that there would be very significant obstacles to his integration back into Syria. He had been granted leave to remain as a student and this was not a route to settlement. The Appellant also did not meet the requirements of the "Syrian Concession" (paragraph 5.1). There were also no exceptional compassionate circumstances to his claim. His family were still in Syria and he had spent most of his life there, and he had been returning there.
5. The judge also had regard to the submissions made by the Appellant's representative, who appeared as her Counsel, who had relied upon her skeleton argument, and who had maintained that "the whole point of the Syrian Concession was to make the Rules more flexible for Syrian nationals and discretion should have been exercised in the Appellant's favour" (paragraph 5.2). The Appellant's case was not that he could not go back to live in Syria, as he had not made an asylum claim, what he was saying was that he could not go back there and continue with his studies because universities there are not functioning (paragraph 5.2).

The Judge's Findings

6. The judge concluded that the Appellant's family were still in Syria. He had family support there. He had returned to Syria during the course of his studies. There was no evidence to suggest that he could not reintegrate successfully into Syrian life upon return (paragraph 6.8). As far as the Appellant's studies were concerned, the judge observed that:

"I have great sympathy for the view expressed in some of the material the Appellant has submitted that it is important that the education of a generation of young Syrians is not put in jeopardy because educated individuals will be needed to rebuild the country", (paragraph 6.6)

but the judge was not persuaded that the Appellant could succeed on this basis.

7. First, Article 8 did not include the right to study or work in this country (paragraph 6.7). Second, the Appellant's private life arose in the context of limited leave to remain which permitted no expectation of a further grant of leave to stay here (paragraph 6.7). Third, the reference to the "Syrian Concession" was of no assistance to the Appellant, because the purpose was not to enable a person to succeed, where that person would not otherwise be able to meet the requirements of the Rules (paragraph 6.9).
8. The appeal was dismissed.

Grounds of Application

9. The grounds of application state that the judge misinterpreted and misapplied the significance of the Home Office "Syrian Concession" in the context of Article 8, in that she failed to take proper account of this concession in the proportionality exercise, given the civil war in Syria. Second, that the judge had conducted the hearing in a procedurally unfair manner because she failed to take account of the Appellant's documents and failed to allow the Appellant's representative to complete her final submissions.
10. Given the allegation that the judge had acted in a procedurally unfair manner, by preventing the Appellant's representative, from completing her submissions, the Tribunal Judge, Judge Dhanji, was asked to provide a response to the allegations, which she did in a detailed "Memorandum".
11. In consequence, on 22nd November 2018, the Upper Tribunal listed this matter for an appeal hearing in the Upper Tribunal.

Submissions

12. At the hearing before me, the Appellant was represented by Mr Dingley of Counsel. He, very properly at the outset, submitted that there was

nothing in the question of the “Syrian Concession” because that was intended to apply only on a points-based system appeal, and would not have assisted the Appellant in this case. The more important question, was a short point, but nevertheless, a good point, he submitted. This was the fact that the judge’s failure to allow the representative to continue with her submissions, would have been viewed as being tantamount to the lack of a fair hearing, by an objective bystander, which in this case would have included the Appellant himself, who had attended this hearing for the first time with his legal representatives.

13. Second, although in her Memorandum, the judge makes it clear that “I remember the case well because I have not before had to consider the Syrian Concession” (paragraph 1), and although she states that she does not recall having interrupted the submissions of the Appellant’s representative and brought them to an abrupt ending, she does also state that in the past she has acted in a way as to bring submissions to a close (see her penultimate paragraph). That, submitted Mr Dingley, was enough to show that there was an error of law. Mr Dingley drew my attention to his well-compiled skeleton argument, which has been of great assistance to this Tribunal, as well as the attached cases on procedural unfairness, which he put before this Tribunal.
14. For his part, Mr Lindsay submitted that there was no error of law. First, Judge Dhanji expressly states that she has recollection of this case and that she did not cut the Appellant short. The Appellant’s Counsel, had provided a skeleton argument, and the judge refers to this in her determination. Moreover, the representative herself in her “Statement of Truth” before this Tribunal, makes it clear that she had addressed Judge Dhanji’s Tribunal for a good eight to ten minutes in her submissions. It also ought not to be forgotten that the representative was a competent and experienced Counsel of some twelve years’ standing, and that if she felt she had been curtailed in making her submissions, it would have been open to her to have stated precisely that before the judge, but she did not do so. Finally, and in any event, there is no material error of law, because on the materials before this Tribunal, it is not possible to say how the Appellant could have succeeded in an Article 8 appeal in this regard.
15. In reply, Mr Dingley submitted that the short point was that the representative was not allowed to finish her submissions in relation to paragraph 276ADE. He himself could not say exactly what it was that she planned to submit before the judge by way of persuading the Tribunal that this appeal stood to be allowed. That was neither here nor there. What was important was the fundamental right of a legal representative, to be allowed to make their submissions, without feeling that they are under pressure to stop, and without actually in point of fact, being stopped by the judge. This was the position here. He drew my attention to the important cases that he relied upon in this regard. These were the cases of **Alubankudi [2015] UKUT 00542** and **Elayi [2016] UKUT 00508**.

No Error of Law

16. 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 and remake the decision. I come to this conclusion notwithstanding Mr Dingley's valid and commendable efforts to persuade me otherwise. My reasons are as follows.
17. First, this is a case where the Appellant's representative on the day, an experienced Counsel in this jurisdiction, with her own practice, herself states (paragraph 10) of her statement of truth, that she was continuing "with respect to the Syrian Concession" when "the Immigration Judge spoke to the Appellant and stated that that was the end of the appeal and she would make her decision in due course". Her representative states only that, "I was taken aback by the fact that she had done that whilst I was still making submissions and I did not attempt to stop or argue with her ..." (paragraph 10). Given that it has now been conceded by Mr Dingley, that there was nothing in the question of the "Syrian Concession" of any importance to the Appellant's appeal, it is understandable for the judge to have decided that she had heard enough on this issue. But more importantly, her representative does not say that she objected to the termination of the proceedings. She did not alert the judge to the fact that she was still wishing to make further representations. This indeed is the judge's own recollection of the matter as well because Judge Dhanji makes it clear in her memorandum (paragraph 1(iv)) that "nothing was said or done by [the representative] at the hearing to indicate that she had not finished, no such issue arose".
18. Second, it does appear to be the case here that the representative decided to raise this as a ground of appeal only after she had found that the appeal had not been allowed, because she makes it clear that, "I was of the opinion that she [the judge] therefore accepted the submissions with respect to the concession and did not wish to hear me further" (paragraph 10). Indeed, the representative goes on to say that, "I honestly thought I was stopped as she was agreeing with my submission and therefore there was no need for me to continue, as I have experienced with previous judges" (paragraph 15).
19. Third, the representative on the day in question was able in any event to make oral submissions for eight to ten minutes (paragraph 12 of the statement of truth).
20. Fourth, the judge had the skeleton argument of the representative in question (paragraph 13).
21. Finally, it is difficult to see how the Appellant was prejudiced in any way by what transpired at the hearing. Indeed, even if the representative on the day is correct in relating the events in the manner that she does, the objective bystander would not have left the court hearing under the impression that he or she had failed to secure a fair hearing, because the representative herself states that,

“Immediately after the appeal, the Appellant asked me why I was stopped and I reassured him that my skeleton argument was before her. This was again discussed with the Appellant when this appeal was refused and I had advised him that I would rely on this issue when drafting the grounds for permission.” (Paragraph 14)

Notice of Decision

22. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall stand.

23. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21st January 2019