



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/08846/2019

THE IMMIGRATION ACTS

Heard at Manchester via Skype
On 30 October 2020

Decision & Reasons Promulgated
On 08 December 2020

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUHAMMAD HAFEEZ
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R O’Ryan instructed by Scarsdale Solicitors.

For the Respondent: Mr S Kotas Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Raikes (‘the Judge’) promulgated on the 14 November 2019 in which the Judge dismissed the appellant’s appeal on human rights grounds.
2. Permission to appeal was granted on a renewed application by the Upper Tribunal in the following terms:

“The appellant’s claim before the FtT was advanced on the basis that he satisfied paragraph 276ADE(1)(vi) of the Immigration Rules. It was said, in

particular, that he suffered from a poor mental health; that he had been in the UK for a number of years; and that he had no support network to which he could turn in Pakistan.

The appeal was dismissed by Judge Raikes and permission to appeal was refused in the FtT by Judge Parkes. I consider it arguable, for the reasons given in the grounds, that Judge Raikes erred, at [35], in finding that the appellant had given inconsistent evidence about his contract with his family. It is also arguable that the Judge failed to take material evidence into account when she concluded that those who supported the appellant in the UK could remit funds to him in Pakistan: [41].

The third ground of appeal is that the judge misdirected herself in law at [61] when she considered whether there were insurmountable obstacles to reintegration. The test was obviously whether there were very significant obstacles to reintegration. The ground is unarguable. It is quite clear that the judge was aware of the proper test: [7] and [45] refer. The slip at [61] was evidently just that, and not a misdirection on the test to be applied.

Even if grounds one and two are made out, it may well be that the Upper Tribunal decides not to set aside the decision of the FtT. Taking the claim at its highest, it seems doubtful that the threshold in Kamara [2016] 4 WLR 152 and Parveen [2018] EWCA Civ 932 can be reached. It would not be appropriate to refuse permission on that basis but the question must clearly be considered by the appellant's representatives."

3. Permission was therefore granted on Grounds 1 and 2 but refused on Ground 3.

Error of law

4. The appellant is a citizen of Pakistan born 1 January 1943 who entered the UK as a visitor with leave valid to 4 October 2006. On 27 August 2010, the appellant was served with IS151A. On 19 August 2011, the appellant claimed asylum which was refused on 16 September 2011 with no right of appeal. Notwithstanding this, on 3 October 2011 the appellant lodged an appeal with the First-tier Tribunal which was dismissed on 3 November 2011. By 6 December 2011, the appellant became appeal rights exhausted. On 30th August appellant was served with RED.0001 after which he made one human rights application and two EEA residence card applications between 2015 and 2017, all of which were refused, the first with an out of country right of appeal and the other two with no right of appeal, after which he made another application for leave to remain on the grounds of his medical condition pursuant to paragraph 276 ADE, Article 3 ECHR and on the basis of family and private life pursuant to Article 8 ECHR.
5. The Judge had the benefit of considering both written and oral evidence which is summarised in the decision under challenge. The Judge's findings and reasons are set out between [32 – 73] of the decision.
6. Ground 1 asserted the Judge has made a mistake of fact and failed to have proper regard to the evidence in relation to the appellant's circumstances in Pakistan. The Judge noted at [35] that the appellant claimed he had been effectively estranged from his family in Pakistan and had not spoken to any of them since he left in 2006 yet noted at [23(b)] the appellant's evidence he had had previous contact with the daughter who had given birth although when he rang to say congratulations she

hung up on him. It is said the finding the claim to be estranged appeared to be in apparent contrast to the claim he had contacted one of his daughters 8 to 9 months ago is a finding infected by arguable error on the basis that although the appellant attempted to speak to his daughter he was unsuccessful.

7. Paragraph [35] appears within the section of the decision in which the Judge was considering the evidence as a whole and making relevant findings upon the same. The appellant did not hide the fact he has three daughters and two sons in Pakistan but claimed he was estranged from them as a result of his wife's death. He also claimed that if returned he has no means of supporting himself and no housing.
8. It is important to read the evidence and decision as a whole rather than the specific limited sections. Those relating to the challenge set out in Ground 1 are to be found at [35 - 36] in which the Judge writes:

"35. In his evidence today I note that whilst the Appellant accepted that he had family in Pakistan, he maintained that he was effectively estranged from them as a result of his wife's death. However, whilst he went on to indicate that he had not spoken to any of them since he left Pakistan in 2006 due to their hatred of him, he then stated in apparent contrast to this that he had contacted one of his daughters some eight or nine months ago as she had given birth although he stated that she had then hung up the phone when she realised it was him. Further, whilst he explained that his family had disowned him after his wife's death, he was, in my view, unable to clearly to explain, or indeed chose not to explain, why this would have stopped him returning to his own home and business as a shopkeeper, or even returning to another area of Pakistan if he chose to once his six month visit Visa had expired. I find that even if he was uncomfortable at the prospect of his family's reaction upon return, there was no suggestion, for instance, that there was any threat or danger to him on return. Indeed, I note that he claimed asylum in 2011 and whilst the grounds are unknown, his appeal was rejected then.

36. In addition to the above, whilst I accept that he has a poor memory and has been referred for dementia, he was able to clearly recall his home and what type of business he had, selling spices notably chilli, when he left Pakistan to come to the UK yet on the other hand when questioned was unable to fully recall why his family blamed him for their mother's death following an accident. He was also unable to clearly explain, other than that he had heard of the birth of his grandchild, why having claimed to have effectively run away from his family in Pakistan over two years after his wife's death as a result of what he states was them blaming him, he had suddenly decided to contact his daughter eight or nine months ago some 13 years after leaving Pakistan and arriving in the UK. On this basis I do not accept, given both his inconsistent and at times when asked directly about the situation, his vague evidence, that the lack of ties or connections to Pakistan and lack of contact with his family, are as he claims."

9. The Judge had the benefit in addition to the written evidence of seeing and hearing oral evidence being given. The grounds challenge what is said to be an inconsistency between the claim to have been estranged yet to have made contact

- with the daughter but that is not the Judge's core finding which is that the appellant's claims regarding lack of contact with his family in Pakistan is not accepted as being credible.
10. Ground 1 also asserts the Judges finding the appellant was vague in his answers as to why the family in Pakistan blamed him for his wife's death is flawed but the Judge had proper regard to the manner in which the appellant gave his evidence, taking into account the finding he has a depressive disorder [33]. This is a finding made having reflecting on all the evidence generally.
 11. The weight to be given to the evidence was a matter for the Judge and it has not been shown the weight the Judge gave to the same is arguably irrational or outside the range of findings available to the Judge.
 12. In relation to paragraph 276 ADE, the Judge clearly took into account the appellant's evidence as a whole in which it is found at [44] the appellant had not demonstrated that he has no social and cultural ties to Pakistan. The Judge took into account the submission the appellant will face very significant obstacles to his integration but did not find that have been made out at [45], having considered both the appellant's medical needs and situation generally.
 13. Ground 2 relates to financial support. The appellant's evidence was that he was being supported in the UK by a Mr Chaudhary with whom he lived and who provides a nominal sum of £5 to £10 per week. The evidence from this person was that he could not financially support the appellant if he is to return to Pakistan as he has a wife and four children to support in the UK, is a self-employed taxi driver, who claimed to be already struggling to fulfil his own financial commitments. The Judge is challenged for finding the witness was unable to provide a plausible explanation for why he could not assist the appellant in the same way Pakistan which is said to be a finding that fails to have proper regard to the explanation provided. Mr Chaudhary could not accommodate the appellant as part of his household if he had been removed to Pakistan and there was evidence there would be insufficient funds to financially support the appellant in Pakistan which it is claimed the Judge failed to engage with.
 14. At [58] the Judge noted that two witnesses provide a degree of financial support to the appellant in the United Kingdom but found they were unable to provide a plausible reason as to why they could not assist the appellant if he was returned to Pakistan. The explanation was given in light of the oral evidence that only limited financial assistance was available as a result of their own financial needs. Notwithstanding, the Judge concludes at [58] that the explanation was not found to be plausible. Whilst the grounds disagree with this finding it has not been made out this finding is not reasonably open to the Judge having seen and heard the evidence and having attached the weight to the same the Judge felt appropriate in all the circumstances of this appeal.
 15. Also, at [57] the Judge writes "*Despite the assertion by him that there is no one to him there, I am satisfied that he has family there and even whether due to societal constraints his daughters were unable to provide for him and his son did not speak to him, he accepts that he has a brother and has provided little, if any, explanation as to why he does not speak to him why he would not assist him were he to return.*" The Judge's findings in relation to the availability of financial support is therefore not limited to the support from the two witnesses in the UK. There is merit in the submission that even if the witness who currently provides accommodation and pocket money to the appellant could

help no further, for the reason stated, it had not been made out any error in this regard is material in light of the lack of clarity in the evidence given to the Judge regarding the full range of available family support.

16. The Judge summarises her position in relation to Article 8 outside the Immigration Rules as [61] the following terms:

“61. It is against my findings of fact, consideration of the case law and the objective evidence presented that I must then consider the Appellant’s human rights under Article 8. I note that the Appellant did not seek to rely on the requirements of Appendix FM and I have considered the requirements of paragraph 276 ADE above. I am satisfied that given his circumstances and the findings I have made there are no insurmountable obstacles to his return. Whilst he may not now be able to work, he has family there who I am satisfied would provide assistance to him, and access to medical care which whilst not of the same standard as in the UK, is still available.”

17. The Judge had found in the preceding paragraphs that the appellant would be able to reintegrate and re-establish his private life in Pakistan.
18. Article 8 ECHR outside the Rules is considered from [62] in a properly structured manner confirming, having weighed the competing factors, that requiring the appellant to return to Pakistan will not result in an unwarranted interference in a right protected by Article 8, making his removal from the United Kingdom proportion.
19. Whilst the appellant clearly wishes to remain in the United Kingdom and disagrees with the findings of the Judge, any error established has not been found to be material. The threshold in Kamara and Parveen have not been shown to be reached on the basis the evidence before the Judge.
20. Whilst the appellant disagrees with the findings made and clearly wished to remain in the United Kingdom he fails to establish arguable legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in relation this matter.

Decision

21. **There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

22. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 30 November 2020