



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

Appeal Number: HU/15841/2019 (R)

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
with parties attending by Skype
On 13th October 2020**

Decision & Reasons Promulgated

On 22nd October 2020

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**SALEEM JAHANGIR KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondents

Representation:

For the Appellant: Mr. I Khan, NK Law Solicitors, acting as agent for
International Immigration Advisory Services

For the Respondent: Mrs. H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS (R)

1. The hearing before me on 13th October 2020 took the form of a remote hearing using skype for business. Neither party objected. The hearing was listed to commence at 10:30am but Mr Khan did not join the hearing until 10:50am, after enquiries had been made by the Tribunal clerk with International Immigration Advisory Services to establish whether the

appellant was to be represented at the hearing. Mr Khan claimed that although he was aware of the hearing listed, he had not been sent the link to join the hearing and had only been provided with the link, following the enquiries that were made by the Tribunal. He had been instructed to act as an agent by International Immigration Advisory Services. Although Mr Khan had joined the remote hearing by Skype and could be heard, neither I nor Mrs Aboni could see Mr Khan. I suggested to Mr Khan that he should try and re-join the hearing so that he could be seen, but he claimed that the video function on the Skype software that he was using, was not working. He confirmed that he was happy to continue with the hearing, and that he could see and hear both myself and Mrs Aboni.

2. I was informed by Mr Khan that the appellant is aware of the hearing. Mr Khan had instructions that the appellant is happy for the hearing to proceed. Had a request been made for a simultaneous BT conference call to be facilitated so that the appellant could hear the proceedings, I would have acceded to such a request.
3. I sat at the Birmingham Civil Justice Centre and the hearing room and building were open to the public. The hearing was publicly listed, and I was addressed by the representatives in exactly the same way as I would have been, if the parties had attended the hearing together. I was satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

4. The appellant appeals the decision of First-tier Tribunal Judge Raikes promulgated on 24th December 2019, in which she dismissed the appeal against the respondent's decision of 9th September 2019 to refuse the appellant leave to remain in the UK on the basis of his family life with his son, Muhammad Bilal Khan.

5. The appellant filed an application for permission to appeal to the Upper Tribunal, claiming the decision of Judge Raikes was vitiated by material errors of law. The grounds of appeal that appear to have been settled by Mr. Chaudhry of counsel, summarise the background and go on to say, at paragraph [1]:

“... From the above, it is proved that at the time of the application the appellant's son was not even near 18, let alone twenty. The Judge materially erred in law when instead of counting the age of the applicant's son on the date of the application he considered it as it was on the date of the hearing.

If the application is considered under the immigration rules, the relevant date is the date of the application, while under article 8 it is the date of the hearing. Albeit, there is case law on the point, a recent one is referred to here where it was held that validity of an application for leave to remain is to be determined with reference to the law in force at the time that it is made or purportedly made [Das and Anor, And SSHD [2019] UKUT 354]

...”

6. The appellant also advanced a second ground of appeal. That is, if judged objectively, the appellant could face very significant obstacles to reintegration in Pakistan, and the judge erroneously interpreted the words 'significant obstacles' in a literal way, rather than in a sensible and practical sense.

7. Permission to appeal was granted by First-tier Tribunal Judge Page on 5th April 2020. He stated:

“This application pursues two grounds. The first ground is arguable as it discloses an arguable error of law in that the judge at para 28 of the decision has applied the date of hearing and not the date of the appellant's application when he would have been under the age of 18. The second ground that the judge should have found that there were significant obstacles to return to Pakistan does not appear to be arguable. I give permission on the first ground only.”

8. Having reviewed the file, Upper Tribunal Judge Smith sent a note and directions to the parties expressing her provisional view that it would be appropriate to determine without a hearing, pursuant to Rule 34, whether the making of the FtT's decision involved the making of an error of law, and if so, whether that decision should be set aside. Neither party complied with the directions given.

9. The matter was reviewed again by Upper Tribunal Judge Smith and she issued a further note and directions dated 31st July 2020. At paragraph [4], she referred to the appellant's grounds of appeal, and at paragraph [5], to the grant of permission to appeal. At paragraph [4], referring to the first ground of appeal, she said:

"... I am afraid that I struggle to understand this submission as the appellant's son was born on 23 January 1999 (see birth certificate at [AB/16]) and so would have been aged 20 years whether that is taken at the date of application (23 March 2019) or date of hearing (10 December 2019)..."

10. At paragraph [7], Upper Tribunal Judge Smith said:

"Neither party has filed submissions in this case either developing the grounds of appeal or as to the forum for determination of the error of law stage of the appeal. As I have noted above, I do not understand the ground on which the appellant has expressly been given permission. It may be that I have misunderstood the evidence and I think it only fair to allow the appellant to respond to what I say rather than deciding the error of law on the papers. I note that, although Judge Page clearly intended to refuse permission on the remainder of the grounds, the way in which his decision is written means that the appellant is probably able to argue the remaining grounds but should take account of what is said by Judge Page in his reasons and also what I say, particularly about the "Agyarko" point. If, having considered what is said above, the appellant wishes to withdraw his appeal, he should notify the Tribunal as soon as possible. That is however, a matter for him."

11. Given what she had said about the possibility of having misunderstood either the evidence or the grounds pleaded, Upper Tribunal Judge Smith directed that the 'error of law' should proceed by way of a remote hearing, rather than being dealt with on the papers. She gave directions for the matter to be listed for a remote hearing, using Skype for Business. It was

against that background that the appeal was listed before me on 13th October 2020.

12. I can dispose of the appeal in short form. Mr Khan conceded at the outset that there is no merit whatsoever to either of the grounds of appeal. He accepts the appellant's son was aged 20 when the appellant made his application for leave to remain in the UK on 29th March 2019. He was unable to offer any explanation at all as to why the appellant's representatives had claimed in the grounds of appeal that the appellant's son "*... was not even near eighteen, let alone twenty ...*". He acknowledged that even if one were to read the decision of Judge Page as being a grant of permission on all grounds, the second ground of appeal was equally without any merit. He accepts that it was open to Judge Raikes to dismiss the appeal for reasons set out in her decision promulgated on 24th December 2019.
13. Mr Khan was unable to offer an explanation as to why the appellant's representatives had persisted in pursuing an appeal that was entirely misconceived, and as Mr Khan acknowledged, entirely without any merit. He was unable to give any explanation for the failure of the professional representatives to take heed of the matters set out in the note and directions issued by Upper Tribunal Judge Smith dated 31st July 2020.
14. Misleading the Tribunal in an application for permission to appeal in the way that occurred here, has a serious impact upon the ability of a Judge to deal with the application fairly and properly, in the limited time available. A judge considering an application for permission to appeal is entitled to proceed upon the basis that professional representatives will not mislead the Tribunal. Here, the grant of permission was secured by misleading the Tribunal as to the age of the appellant's son as at the date of the appellant's application. Behaviour of this kind runs contrary to the professional duties of the representatives and is entirely contrary to the duty set out in paragraph 2(4) of the Tribunal Procedure (Upper Tribunal) Rules 2008, upon parties to help the Tribunal to further the overriding

objective. That includes the objective to deal with cases fairly and justly in ways which are proportionate to the importance of the case, the complexity of the issues, and the anticipated costs and resources of the parties. Pursuing what is an entirely unmeritorious appeal, as was immediately acknowledged at the outset of the hearing before me by Mr Khan, means that the resources of the Tribunal have been taken up in circumstances where they could have been better directed to an arguable appeal.

15. I have significant concerns about the conduct of the professional representatives such that I require the managing partner/director of International Immigration Advisory Services to send a copy of this decision to counsel that settled the grounds of appeal. The managing partner/director shall also furnish me with the following information within seven days:
 - a. The name and practising address of Counsel that settled the grounds of appeal, and confirmation that a copy of this decision has been provided to counsel.
 - b. Their explanation for misleading the Tribunal in the grounds of appeal by claiming that the appellant's son was not even near eighteen as at the date of the application, when it must have been obvious from even a cursory reading of the birth certificate that he was born on 23rd January 2019 and thus 20 years old at the date of the application.
 - c. Their explanation for continuing to pursue what was an entirely hopeless appeal from the outset, having received the note and directions issued by Upper Tribunal Judge Smith dated 31st July 2020.
 - d. Any reasons they wish the Tribunal to consider before it makes a decision as to whether the conduct of the appellant's professional representatives should be reported to the Solicitors Regulation Authority and/or Bar Standards Board.

16. Counsel that settled the grounds of appeal shall within 14 days of this decision being sent to the parties, furnish me with the information set out at paragraph 15(b) and (d) above.

Notice of Decision

17. The appeal is dismissed and the decision of First-tier Tribunal Judge Raikes shall stand.

Signed **V. Mandalia**
2020

Date 13th October

Upper Tribunal Judge Mandalia