



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001263
UI-2023-001264
First-tier Tribunal Nos:
HU/57985/2022 LH/00871/2022
HU/54454/2021
IA/11276/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

Ali Asim
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr J Danji, Counsel instructed by ATM Law Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 14 June 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan. He was born in 1985. He appealed two decisions of the Secretary of State, one on 4 March 2021 and another on 17 October 2022 refusing him entry clearance to the United Kingdom. The appeals were linked by direction of the First-tier Tribunal. They essentially deal with the same facts and the same point. Judge D Brannan sitting in the First-tier Tribunal dismissed the appellant's appeal against the decisions of the respondent and it is his decision that is challenged before me.
2. I regret the delay in promulgating this decision. It is based closely on a draft that I received from the typists on 26 June 2023 and overlooked.
3. The judge found that the appellant had made a human rights claim and that the decision was appealable on human rights grounds but dismissed the appeal in each case. Permission to appeal was given to the appellant. The respondent, in a

Rule 24 notice, raised the contention that the judge was wrong to find that there was in fact an appealable human rights decision before him.

4. I will deal first with the respondent's contention that there was no appealable decision. The respondent relied on the decision of this Tribunal in **MY (refusal of human rights claim) Pakistan [2020] UKUT 00089 (IAC)** which decided that the human rights claim *can* be created simply by an appellant asserting that that is what has been made. It does not follow that the purported application would attract a "human rights decision" but if it did not then it would (obviously) be open to a dissatisfied applicant to seek judicial review of the decision of the Secretary of State on the grounds that it wrongly refused to treat the claim as a human rights claim. This is not what has happened here. The judge has applied his mind to the material before him and concluded that whatever the appellant and respondent might have intended, the fact is that it was a human rights claim and was treated and decided as such.
5. I consider first the decision of 17 October 2022.
6. It refers to the decision of 4 March 2021 being withdrawn and the application reconsidered. The covering letter concluded that "there is no right of appeal or right to administrative review" and then gave reasons on the following page.
7. The application was unusual in that the applicant made plain that he argued he was entitled to return to the United Kingdom because his leave had come to an end in circumstances that the Court of Appeal in the case of **Pathan [2018] EWCA Civ 2103** had determined were lawful but the Supreme Court hearing an appeal against the decision of the Court of Appeal in **R (on the application of Pathan) v SSHD [2020] UKSC 41** had determined were not lawful.
8. The appellant, responsibly, left the United Kingdom after the decision of the Court of Appeal but was aggrieved when he learnt of the decision of the Supreme Court. It is, I think, accepted that he applied for a visitor visa not because he intended to visit the United Kingdom but because it was the best available hook on which to hang a human rights claim, or that is what he thought.
9. It is unremarkable that the respondent found that the appellant did not satisfy the requirements of the Rules relating to admission as a visitor and it is not suggested that that finding is wrong. The refusal letter states:

"Your application has been assessed under the Immigration Rules under which you have applied and I have given consideration to your claim that your right to private life in the UK engages Article 8."
10. The letter continues in a further unnumbered paragraph:

"I have carefully considered your Article 8 right to a private life in the UK and consider that refusing your entry clearance is justified and does not impact on your ability to conduct your private life as you have done up until now since you left the UK."
11. The appellant was told that there was no right of appeal or right to administrative view.
12. The First-tier Tribunal Judge was alive to the argument. It was the respondent's case that the decision did not engage with the substance of the human rights claim. The First-tier Tribunal Judge said:

"9I reject this argument for the simple reason that it ignores the following words in the decision:

'I have carefully considered your Article 8 right to a family life and consider that refusing your entry clearance is justified...'

10 This is the Respondent engaging with the claim and deciding it does not result in a right of entry. There is not other sensible reading of it. The Respondent could have refused to consider the human rights claim as it was made in a visit visa application. She did not do so. She instead chose to engage with the human rights claim, and refuse it. The Tribunal consequently has jurisdiction."

13. Mr Lindsay drew to my attention other parts of the refusal letter that tended to suggest the Secretary of State did not accept that there was a human rights claim but also accepted, as is plainly the case, the letter was less than clear.
14. I find that the First-tier Tribunal was plainly entitled to conclude, having read the papers as a whole, that there was a human rights claim raised and considered and refused and was therefore appealable and I dismiss the cross-appeal raised in the Rule 24 notice.
15. The judge found that the human rights claim had to be dismissed because it was based entirely on the "private life" end of the "private and family life" continuum and the obligations under the European Convention on Human Rights do not extend to people outside the jurisdiction of the State. At the risk of being trite, this bar frequently does not extend to cases based on the "family life" end of the continuum but that is because the family life claim of the applicant mirrors exactly the family life claim of someone within the jurisdiction who, typically, is closely related to the appellant.
16. Mr Danji argued that the facts of this case were different. Here the appellant was not seeking to establish a private life in the United Kingdom (in which event, he accepted, the authorities were very much against him) but that he was taking a novel point because the appellant was seeking to re-establish or resume a private life that had been ended. He said his point was reinforced by the fact that it was ended not because of any fault on the part of the appellant but because of a misapplication of the law by the respondent.
17. That is indeed a different emphasis but, I find, is one that just does not help the appellant. The problem is a decision of the Upper Tribunal (the President Lane J, Upper Tribunal Judge Rimington and Upper Tribunal Judge Storey) in **SD (British citizen - entry clearance) Sri Lanka [2020] UKUT 43 (IAC)** where the Tribunal considered the decision of the Court of Appeal Tribunal said at paragraph 73:

"73. Whilst we agree with Mr Lewis that *Abbas* case addresses a significantly different factual scenario (a proposed visit to an uncle) and that it does not address the situation of a British citizen child or indeed any child, we are unable to accept that in this decision the Court of Appeal envisaged any exceptions to its broadly expressed statement at the level of 'principle' that the right to respect for private life was not engaged in entry clearance cases. At [18] the Lord Chief Justice stated that: '[t]o accept that the private life aspect of article 8 could require a Contracting State to allow an alien to enter its territory would mark a step change in the reach of article 8 in the immigration context. As a matter of principle it would be wrong to do so.'"
18. This, it might be thought, does not leave much room for argument. However, the point was explained in the judgment in **Abbas**. The obligation under the Convention, as explained at paragraph 23, is on the High Contracting parties to

“secure to everyone within their jurisdiction their rights and freedoms defined in Section 1 of this Convention”.

19. Again at the risk of being trite, the whole problem here is that the appellant is not within the jurisdiction but wants to be. I have already indicated that there are exceptions to the harshness of this Rule in the cases of family life but as the Court of Appeal said at paragraph 25, this is because the family life is not simply of the appellant but of the persons within the jurisdiction.
20. I understand the appellant’s sense of grievance in the instant case. However, I cannot find any fault in the reasoning of the First-tier Tribunal. As was made clear in **Abbas** and expressly endorsed in **SD**, family life might be a route to the United Kingdom but private life is not. This case was necessarily based on private life and it must fail. The distinction identified by Mr Danji between establishing and resuming private life does not get round the problem that the right under Article 8 extends to people within the jurisdiction.
21. It follows therefore that the First-tier Tribunal did not err in law and I dismiss this appeal.

Notice of Decision

22. This appeal is dismissed.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 June 2024