



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-002448
First-tier Tribunal No:
HU/56630/2023
LH/02674/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23rd September 2024

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

Inayat Hussain
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L. Marshall-Bain counsel instructed by A & A Solicitors

For the Respondent: Mr E. Terrell, Senior Home Office Presenting Officer

Heard via Cloud Video Platform at Field House on 9 September 2024

DECISION AND REASONS

1. The Appellant, a national of Pakistan, appeals with permission against the decision of First-tier Tribunal Judge Richards dated 18 April 2024, against the decision of the Respondent to refuse his human rights claim in which he had sought leave to remain, but which was extended by agreement of the Respondent at the hearing to include consideration of Article 3 ECHR.
2. Permission to appeal was granted by First-tier Tribunal Judge Haria by way of a decision dated 22 May 2024.

3. The Appellant's grounds of appeal have been well drafted by Ms Shazia Khan of counsel and whereby it is contended in summary that:
 - (i) The Judge materially erred by failing to assess the evidence of the Appellant's witnesses;
 - (ii) The Judge failed to take account of the evidence of the Appellant's memory problems; and
 - (iii) The Judge failed to correctly assess the Appellant's ability to integrate on return in respect of Article 8 ECHR.
4. The Respondent did not file a 24 Reply pursuant to The Tribunal Procedure (Upper Tribunal) Rules 2008.
5. On behalf of the Appellant, Ms Marshall-Bain relied on the grounds of appeal and amplified those grounds in clear and helpful submissions. Her main submission being that there had been no fair hearing whereby witnesses' evidence had not been taken into account when assessing credibility.
6. Mr Terrell in clear and focused submissions submitted in respect of ground 1 that the Judge did consider evidence of the Appellant's sister in relation to sexuality at paragraphs 16 and 17 albeit it was not just about the sister. The Judge had not said much about the sister, but that was not an error. The sister's evidence was not central, the evidence about sexuality was.
7. In respect of ground 2 the Judge did accept the Appellant suffered with depression, but the Appellant could not even remember his partner's name. Although there was a referral to a memory clinic, it did not prove a diagnosed condition.
8. In respect of ground 3 Mr Terrell submitted that the Judge did not consider just the physical aspects, but also being registered blind. Dr Razia Hussain was referred to. The Appellant did need some level of care, but at paragraph 23 it was said treatment could be obtained in Pakistan.
9. In my judgment, the evidence of the witnesses, including the written statement of the Appellant's sister were a very important part of the Appellant's case. The Judge did not adequately consider that very important evidence when deciding whether or not the Appellant's core claim could be accepted and nor was that evidence factored in adequately or at all when assessing the Article 3 and Article 8 ECHR matters. This becomes more acute when considered against the backdrop of vulnerability arising from the memory issues relating to the Appellant and which were referred to during the hearing before the Judge.

10. In my judgment, it is simply too much of a leap to assume that the Judge must have had those matters in mind, when they are not factored into the decision-making. Whilst I am well aware that an appeal Judge must ensure that there is significant deference provided to the expert Tribunal that heard the appeal, in this instance, I conclude that the errors in respect of the consideration of the evidence are material. I cannot be satisfied that had the Judge taken the evidence into account that he might have come to a different conclusion. The evidence not adequately considered by the Judge was not minor or trifling, but related to the core issues, including to the Appellant's sexuality.
11. I canvassed with the parties the appropriate disposal of this case in terms of future steps if I was to find that there is a material error of law in the Judge's decision.
12. I have applied *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and have carefully considered whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. I take into account the history of this case, the nature and extent of the findings to be made. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the matter be remitted to the First-tier Tribunal for a re-hearing.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law. I set aside the decision.
2. The matter is remitted to the First-tier Tribunal for re-hearing on all matters. None of the current findings shall stand.

Signed
Abid Mahmood
Judge of the Upper Tribunal

Date: 11 September 2024