



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16289/2013

THE IMMIGRATION ACTS

Heard at Field House
On 7 March 2014

Determination Promulgated
On 28 March 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR IRFAN ILYAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No representative or appearance
For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan born on 13 June 1975. He appeals against the respondent's decision of 24 April 2013 refusing to vary leave to remain in the United Kingdom and to remove him from the United Kingdom.

2. The appeal came before First-tier Tribunal Judge Coleman at a hearing on 9 October 2013. On that occasion the appellant did not attend and an adjournment was sought on the basis of his health. The judge having considered the matter refused the adjournment, whereupon the representative took no further part in the proceedings.
3. The appeal was dismissed in all respects.
4. Grounds of appeal were submitted, it being contended on behalf of the appellant that it was unfair and unjust in all the circumstances for the adjournment not to have been granted because he has been deprived of the opportunity of presenting his case properly and presenting important documents. It was also asserted that the Judge erred in law in respect of the burden of proof in what was said at paragraph 22. It was upon that somewhat narrow basis that permission to appeal was granted.
5. Thus the matter comes before me in pursuance of the grant of leave.
6. The appellant did not attend nor was he represented. There was a letter from his legal representatives dated 3 March 2014 indicating that they were unable to contact the appellant and have no further instructions from him. Accordingly, they are not representing him at the hearing. I asked my clerk to contact the solicitors in order to obtain the telephone number of the appellant so that direct contact could be made with him. Unfortunately, they had not kept his number. Nevertheless, I am satisfied that due notice was given to both the appellant and his legal advisers as to the hearing of this case.
7. On the subject matter of the adjournment, this was based upon a medical report from the Castlebury Medical Centre dated 2 October 2013. It reads as follows:

“Mr Ilyas tells me that he has fallen down the stairs and injured his back. He is in a lot of pain and is unable to mobilise properly. He is finding it difficult to work and feels that he will be unable to attend the hearing on 9 October 2013. I would be grateful if you can excuse him on that day.

The drugs that are being administered are ibuprofen and co-codamol.”

8. There was a radiology request attached to the report raising the question as to whether there was a fracture of the coccyx. It was noted that the appellant was walking.
9. That application for adjournment was refused before the hearing on the basis that it was not said in the report that the appellant was unable to attend the hearing. It is presumed that with the passage of time the symptoms would settle and would be less uncomfortable on 9 October.
10. The appellant’s representatives renewed their application for an adjournment at the hearing. The outcome of a radiology scan was awaited. There was no new medical

evidence . The appellant had not seen the solicitor since 19 September. He fell on 29 September, the day before he was supposed to see his solicitors to prepare the case.

11. The appellant needed to give a lot of evidence to proceed in the case and had a great many documents and wished to make a long statement. It was thus submitted on behalf of the appellant by Ms Vasharat, who represented him before the First-tier Tribunal, that it would be unjust and unfair to proceed.
12. It is contended on behalf of the respondent that it would seem from the medical evidence that the appellant was able to be sufficiently mobile to see the doctor and go for an X-ray.
13. The Judge asked Ms Vasharat what evidence was to be produced and she was unable to assist with that detail.
14. The Judge concluded that it was in the interests of justice to proceed.
15. I remind myself that it is of fundamental importance in considering whether or not the Judge should have granted such an adjournment to consider what unfairness did or potentially may arise from that decision. One helpful point perhaps would be to consider what were the documents that were required to be presented and whether indeed the appellant, having been prevented from doing so, what prejudice arose in that respect.
16. No documents have been submitted and no indication given since the hearing on 9 October 2013. The appellant himself did not attend and can give no assistance as to those matters.
17. Given the nature of the medical report, I do not find that it was eloquent in indicating that the appellant was unable to walk or unable to attend the hearing, rather that he was in some discomfort. Medication was however that of painkillers rather than anything stronger.
18. I note from the file that certainly in June of 2013 the solicitors were acting for the appellant. It is surprising therefore that, in that time until the time of the alleged accident, no instructions were taken in connection with the claimed documents.
19. I find that it was properly open to the Judge to have refused the adjournment and I note that there are no documents submitted in support of the appeal itself.
20. The circumstances that give rise to the appellant's appeal is that he contends that it would be in breach of his human rights for him to be removed from the jurisdiction.
21. He first arrived in the United Kingdom on 13 May 2004 as a student. He made various applications to extend his stay, the final stay being extended to 27 January 2013.

22. On 26 June 2008 his wife arrived in the United Kingdom as his dependant and on 3 April 2009 his son was born.
23. On 25 January 2013 the appellant made the further application to remain in the United Kingdom with his wife and child as dependants. As was noted by the Judge, at paragraph 3 of the determination, it was not entirely clear from the covering letter why it was the appellant was seeking to remain in the United Kingdom. The application said that he had no ties with Pakistan but he spoke English and Urdu and had last visited Pakistan in January 2010, having been back about four or five times during his time in the UK. He had been awarded a Master of Business Administration from the University of Wales.
24. The Judge, in considering the question of ties with Pakistan, dealt with the same at paragraph 19 of the determination. The appellant had visited Pakistan four or five times since coming to the United Kingdom, the last visit being as recently as February 2011. He had lived his whole life in Pakistan up to the age of 29 and speaks Urdu. He is married to a Pakistan national. There is a bank account in Pakistan which is active.
25. The Judge noted that the appellant's wife had no individual right to remain in the United Kingdom and that the child was not a British subject.
26. In those circumstances, it was clear that neither the appellant nor any members of his family could meet the requirements of the Immigration Rules. As the Judge indicated at paragraph 22, there was the necessity for any two stage process considering human rights, the first step being a consideration of the Rules and the second being a consideration of the general principles of human rights outside of the Rules.
27. It is argued that the Judge had misdirected himself as to the burden of proof in paragraph 22.
28. The Judge said as follows:-

“In such a general Article 8 appeal the burden of proof is on the appellant to show that his family or private life in the United Kingdom such as to engage Article 8 and that such a private or family life would be interfered with by the decision herein. Furthermore the appellant must prove that the interference would be disproportionate to the lawful and legitimate aim of the Secretary of State in maintaining immigration controls.”
29. It is contended in the grounds that it was for the appellant to prove that the decision interfered with his private or family life with consequences sufficient to engage the Article. If such interference is shown, the burden is on the respondent to justify it, by showing that it is proportionate. It is argued that there was a material misdirection

by the Judge. It is contended that the Judge has in effect reversed the burden of proof.

30. Although technically inaccurately expressed, it is clear from the determination when read as a whole, that the Judge has considered the issue of proportionality in the correct way.
31. In paragraph 24 the Judge notes that there is no specific evidence of the appellant's private life in the United Kingdom. He has been in the United Kingdom for nine and a half years studying and achieved a masters degree. He has put down roots with his local community, although there was little specific evidence of that fact.
32. The Judge went on to indicate as follows:-

"I therefore proceed to consider whether or not that interference with their private life is disproportionate to the legitimate aim of the Secretary of State maintaining immigration control. In this case I can find no reason to say that it would. The appellant entered the United Kingdom in a temporary capacity as a student. He must have known that that gave him no right to remain in the United Kingdom indefinitely. He had lived all his formative life in Pakistan. He still retains ties with Pakistan. He had been back to visit Pakistan four or five times and the last time as recently as February 2011 with his wife and child. There is clear evidence that at least until February 2010 he was running a bank account in Pakistan and he was obtaining monies from there. Although he will have to resettle himself in Pakistan, there is no evidence of any particular hardship in doing so. He has acquired national recognised qualifications in the United Kingdom including MBA. That must assist him in re-establishing himself in Pakistan."

33. The Judge went on to comment:-

"There is nothing in the appellant's case or any of the matters he has put forward in his grounds of appeal which would indicate that there is anything unusual about the appellant's situation which will mean that the normal Immigration Rules should not apply to the appellant."

34. I find there is nothing objectionable to that approach.
35. Even accepting the difficulties of the appellant in his injuries in October, there have been no further documents submitted and no statement of evidence. It is far from clear from the paperwork as to why it was that the appellant seeks to remain in the United Kingdom, let alone a stay that would invoke Article 8 of the ECHR.
36. I note for the sake of completeness a case relied upon by Mr Avery on behalf of the respondent, namely **Naseem & Others (Article 8) Pakistan [2014] UKUT 25 (IAC)**.

37. The Tribunal in that case considered a number of cases in which applications were made to remain and refused. The examples which are given are various and are largely fact specific. However, in most cases the facts of the matter are not dissimilar from those of the appellant. In most of those also, leave to appeal was dismissed.
38. Looking at the matter overall, therefore, there is no indication as to what of the documents are to be relied upon and none have been produced, notwithstanding a number of months have elapsed from the grant of permission to the hearing.
39. I am satisfied that the appellant has been duly notified of the hearing. He has had every opportunity therefore of placing before the Tribunal his comments as to why the refusal to adjourn the case was unfair and/or it might materially affect the outcome of the proceedings.
40. I find, therefore, that it was open to the Judge to refuse to grant the adjournment and, on the basis of the evidence as then presented, I do not find that the appellant could have succeeded substantively in his appeal on the evidence as then produced. The circumstances, without more, are not such as to engage Article 8 to the extent of finding that removal was disproportionate.
41. In all the circumstances, therefore, the appeal is dismissed such that the findings of the First-tier Tribunal Judge shall stand, namely that the appeal under the Immigration Rules is dismissed and the appeal under Article 8 of the ECHR is also dismissed.

Signed

Date

Upper Tribunal Judge King TD