



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/17971/2013

THE IMMIGRATION ACTS

Heard at Manchester
On 21st March 2014

Determination Promulgated
On 27th March 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MISS UZMA MAHMOOD

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mrs S Ali (instructed by Shehzad Law Chambers)

For the Respondent: Mr A McVeety (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, against a determination of the First-tier Tribunal (Judge Pickup) who in a determination promulgated on 5th December 2013 dismissed the Appellant's appeal against the Secretary of State's decision to refuse her leave to remain in the UK as a Tier 1 (Entrepreneur) migrant.

2. Permission to appeal was sought on the basis that Judge Pickup had not determined all the grounds of appeal raised by the Appellant, in particular that the decision was unlawful under section 6 of the Human Rights Act 1998 and on Article 8 grounds.
3. The First-tier Tribunal Judge granting permission felt that it was an arguable error of law to fail to consider the Appellant's human rights.
4. The matter then came before Deputy Upper Tribunal Judge Bruce on 12th February 2014. On that occasion she was tasked with deciding whether or not the First-tier Tribunal had made an error of law and if so whether and to what extent the determination should be set aside. She noted that the grounds were that the error was a failure to deal with Article 8. She also noted that the Secretary of State argued that Article 8 was not engaged because there was no removal decision.
5. Mrs Ali however sought to argue before Judge Bruce that the decision was flawed for procedural impropriety. She sought permission to amend the grounds of appeal which had not been drafted by her. She told Judge Bruce that she had been the representative before Judge Pickup and that the case had been on the float list. She told Judge Bruce that Judge Pickup would not permit her to make an Article 8 argument or permit her to call oral evidence. At that point Judge Bruce, quite rightly pointed out to Mrs Ali that if she was intending to make such a suggestion she would firstly need to seek to amend the grounds, secondly file a witness statement and thirdly would be unable to represent the case because she was a witness. She therefore adjourned the hearing to enable the Appellant to obtain advice about whether she was to pursue those matters and for Mrs Ali to take instructions.
6. Between then and the hearing before me those representing the Appellant made a Rule 15 application to submit further evidence in the event that the First-tier Tribunal's determination is set aside, an application to amend the grounds to submit that the Judge erred in failing to address the grounds of appeal which in fact were not before him as they were not in the court file and that it was an error to have proceeded without the grounds of appeal because in so doing he did not address all grounds of appeal.
7. The representatives also submitted a bundle of documents which included the original grounds of appeal that should have been before the First-tier Tribunal but were not. They did not pursue any allegation of procedural unfairness on the part of Judge Pickup and indeed Mrs Ali appeared again in front of me.
8. Firstly, I would make clear that it is quite clear from the Tribunal's IT system that the grounds of appeal, omitted when the original Notice of Appeal was submitted, were received by the First-tier Tribunal prior to the hearing before Judge Pickup but were not put on the file and therefore not before him. I have

seen those grounds of appeal. They are lengthy. Paragraph 1 is an "Introduction". Paragraphs 2 to 11 are "Background" and the grounds start at paragraph 12 on page 7. Paragraphs 12 through to 20 complain that the Secretary of State did not act fairly. The grounds are then summarised in paragraph 21 as five points. This is the crucial part of the grounds so I set it out in full:-

(I) That the decision is not in accordance with the law;

(II) That the decision is unlawful under section 6 of the Human Rights Act 1998 (c. 42) (public authority not to act contrary to the Human Rights Convention) as being incompatible with the Appellant's Convention rights;

(III) That the decision is otherwise not in accordance with the law;

(IV) That the person taking the decision should have exercised differently a discretion conferred by the Immigration Rules.

(V) That removal of the Appellant from the United Kingdom in consequence of the immigration decision breaches the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the Appellant convention rights.

9. It is abundantly clear that paragraph 21 is a standard paragraph inserted into all grounds by these representatives. It has no distinct application to a particular appeal. So much is clear because paragraph (V) refers to the decision breaching the Refugee Convention when clearly that was never an issue in this appeal. Similarly paragraph (IV) refers to a discretion conferred by the Immigration Rules when in PBS cases there is no discretion.
10. Accordingly, the reference to section 6 of the Human Rights Act is part of that standard paragraph. Nowhere in the preceding seven pages of grounds is there any reference to the Appellant's family or private life or any thing indicating how removal would be a disproportionate breach of her Article 8 rights.
11. I asked Mrs Ali to take me to the evidence in the Appellant's bundle before the First-tier Tribunal that went to Article 8. In short there was none. The best Mrs Ali could do was refer to paragraph 4 of the Appellant's witness statement that reads: - "I first entered the UK on 19/01/2007 for studies"
12. I asked Mrs Ali to take me to a skeleton argument that the decision breached Article 8. There was no skeleton argument in my or the Home Office Presenting Officers' file. She did produce one however and copies were made. That four-page document contains no reference whatsoever to Article 8.

13. The a Record of Proceedings indicates that the Appellant relied upon the principles of fairness and the evidential flexibility policy only.
14. It is abundantly clear therefore that Article 8, although contained in a standard paragraph in the grounds of appeal, was not relied upon at the hearing, no submissions were made with regard to it and no evidence was adduced in relation to it. Accordingly, Judge Pickup can hardly be criticised for failing to deal with it. The total absence of evidence or submissions in relation to Article 8 would justifiably lead him to assume that it was not relied upon. I am reinforced in that decision by the judgement in Sarkar [2014] EWCA Civ 195 in which the Court of Appeal make clear that if an argument is not pursued before the First-tier Tribunal then it can be taken that the Appellant has abandoned it and at paragraph 19 Lord Justice Moore-Bick indicated it was not suggested, nor in his view could it be, that the Act required the Tribunal to determine grounds of appeal which the Appellant had chosen not to pursue.
15. In any event there is absolutely no evidence in this case that could possibly lead to the appeal being allowed on Article 8 grounds.
16. There is no other ground of appeal that it can be said the Judge ought to have dealt with but did not. The fact that the grounds were not before him is thus immaterial. In any event the Appellant was represented by Counsel who submitted a skeleton argument and presented the case and should be expected to make all the points relied upon.
16. Accordingly, I find that the First-tier Tribunal did not make an error of law in its determination and the appeal to the Upper Tribunal is dismissed.

Signed

Dated 21st March 2014

Upper Tribunal Judge Martin