



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

Appeal Number: IA/13642/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th April 2015**

**Decision & Reasons Promulgated
On 28th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL

Between

**MR BABER MAHMOOD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson (Counsel)

For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant's appeal against decisions to refuse to vary his leave and to remove him from the United Kingdom was dismissed by First-tier Tribunal Judge Hanes ("the judge") in a decision promulgated on 9th December 2014. In refusing the application, the Secretary of State made adverse findings under paragraphs 322(5) and 322(1A) of the rules. The judge found that these grounds of refusal were not made out. The Secretary of State also found that the appellant could not show that he met the requirements of paragraph 245ZX(a) and (d) and Appendix C of the rules.

In this context, the judge found that the funds held in the appellant's bank account, shown in a statement he provided with his application for leave, fell below the required minimum for a period of three days in December 2013.

2. In response to the respondent's adverse finding, the appellant provided a Lloyds TSB statement showing that in an account held with that bank, he held funds which more than made up the difference between what was shown in the statement which accompanied his leave application and the minimum required under the rules. The judge held that she could not take this evidence into account, in the light of section 85A of the 2002 Act and that paragraph 245AA of the rules was of no substantial assistance to the appellant. The bank statement which accompanied the leave application was not one which could be described as not containing specified information, so as to give rise to further enquiry by the respondent.
3. The judge did not hear submissions regarding human rights but went on to make an assessment, finding that the requirements of paragraph 276ADE of the rules were not met and that there was nothing to show that the appellant enjoyed a family life in the United Kingdom. She was not satisfied that he had no ties with Pakistan, given that he had spent all of his life there before his arrival in the United Kingdom in 2012. The judge concluded that there were no good grounds for granting leave outside the rules and she reminded herself of guidance given in Nasim and others [2014] UKUT 25 and by the Supreme Court in Patel & Ors [2013] UKSC 72 regarding Article 8's limited utility in private life cases removed from the core area of protection of an individual's moral and physical integrity. She dismissed the appeal.
4. In grounds seeking permission to appeal, it was contended that the appellant had "now proved" that he had sufficient funds, that he had a private life deserving of respect under Article 8 and that the judge failed to properly identify the legitimate aim "served by punishing the appellant for a minor inadvertent breach of the rules".
5. Permission to appeal was granted on the basis that an error may have arisen in relation to Article 8. In a rule 24 response, the Secretary of State opposed the appeal on the basis that the judge had provided sound reasons to support her findings and conclusions. So far as the judge's Article 8 assessment was concerned, the appellant was highly unlikely to succeed as he had only limited leave and a poor immigration history.

Submissions on Error of Law

6. Mr Richardson said that there was no reason to disturb the favourable findings made by the judge with regard to paragraph 322(5) and 322(1A) of the rules. At paragraph 5 of the decision, the judge summarised the evidence of the shortfall, amounting to £41.64 over a period of three days in December 2013. On any view, the rules had operated rather harshly, even though the appellant had a possible opportunity to reapply for leave. He sought to rely on his Lloyds TSB statement showing funds of over £3,500, meeting the requirements of the rules. The appellant fell foul of the specified evidence rules. The judge had explained why she could not look at the Lloyds TSB statement in the light of section 85A of the 2002 Act but this provision was somewhat baffling to appellants themselves. The judge did not accept an

argument based on paragraph 245AA and it followed from that that the appellant could not succeed under the rules or in relation to any discretion contained in the rules. No permission to appeal had been given in relation to this aspect.

7. Permission was given on Article 8 grounds. The judge had not heard submissions from counsel who appeared before her. She identified the starting point as Gulshan, considered recently by the Court of Appeal in Singh and Khalid. It appeared that the fundamental approach remained, requiring first an application of the rules and then arguably good grounds for making an assessment outside them. At paragraph 16 of the decision, the judge found that there were no good grounds in the present appeal. She had in mind here Nasim and Patel & Ors, cases bearing on the proper approach to private life. This was where the error of law might lie. The judge ought to have considered the rules as operating harshly and thereby giving rise to compelling reasons to look outside the rules. There was a failure to consider whether the case might succeed on this basis, even though the requirements of the rules themselves were not met.
8. Mr Tufan said that the judge had made positive findings in the appellant's favour under paragraph 322 of the rules. She had in mind the correct guidance, including paragraph 57 of the judgment in Patel & Ors. In the present appeal, it might be said that Article 8 was simply not engaged, let alone requiring a two stage assessment. Overall, there was clearly no material error.
9. Mr Richardson said that he had nothing to add.

Conclusion on Error of Law

10. It may be accepted, in the light of Mr Richardson's submission, that the application of the rules might appear puzzling to appellants, including Mr Baber Mahmood. After all, taking into account his Lloyds TSB account, he had sufficient funds to show that the threshold required under the rules was met. The difficulty he faced, however, was that the specified evidence of funds was not provided with his application. The judge was entitled to conclude that the substantive requirements of paragraph 245ZX(a) and (d) and Appendix C were not met and, similarly, that paragraph 245AA of the rules did not assist the appellant by means of a possible approach or further enquiry by the Secretary of State which might have led to consideration of the Lloyds TSB funds.
11. The appellant does, of course, have the positive benefit of the judge's findings regarding paragraph 322(5) and 322(1A) of the rules and he may, if he wishes, make a further application for leave.
12. No submissions were made on the appellant's behalf before the First-tier Tribunal Judge in relation to Article 8 and this is, perhaps, unsurprising. After all, he has been present in the United Kingdom for a relatively short period of time, having been given leave to enter on 20th August 2012 and he has had limited leave as a student. There was nothing to show any family life ties here. The judge made an assessment under the rules, concluding that the appellant could not bring himself within paragraph 276ADE and she went on to find that there were no arguably good

grounds for granting leave outside the rules. Paragraph 16 of the decision shows that she also had in mind the important guidance given in Nasim and Patel & Ors.

13. Mr Richardson made a careful submission that an error was shown at this part of the assessment as the judge ought to have taken into account the apparent harshness of the rules, as showing a compelling reason to look outside them. With great respect, I do not accept that an error has been shown here. Indeed, the apparent harshness manifests itself in the form of a “near miss”, where the adverse consequence of the appellant’s failure to show the specified evidence looms large and the margin of failure, the shortfall of £41.64 for a period of three days, seems very small. However, as is clear from Patel & Ors, even a “near miss” of this sort does not, of itself, add anything of real substance to a claimant’s Article 8 case. As Lord Carnwath held, the proper focus is on the family or private life ties (or both) claimed to have been established. In this context, the decision shows that the judge had clearly in mind the appellant’s immigration history, including his relatively recent arrival and his presence here with limited leave as a student. A careful reading of paragraphs 15 and 16 of the decision shows that the judge maintained her focus properly on the appellant’s private life ties, such as they were. Taking into account the guidance in Nasim particularly, even if the judge did err in failing to make an assessment outside the rules, there was nothing in the appellant’s case showing that the public interest in maintaining immigration control (in pursuit of the economic wellbeing of the United Kingdom) was outweighed. The requirements of the rules were not met and the evidence disclosed only very modest private life ties established here during the currency of his student leave.
14. Overall, the judge was entitled to conclude that the appellant could not succeed under Article 8 of the Human Rights Convention.

NOTICE OF DECISION

The decision of the First-tier Tribunal shall stand.

Signed

Date **20th April 2015**

Deputy Upper Tribunal Judge R C Campbell

ANONYMITY

There has been no application for anonymity and I make no direction on this occasion.

Signed

Date **20th April 2015**

Deputy Upper Tribunal Judge R C Campbell

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date **20th April 2015**

Deputy Upper Tribunal Judge R C Campbell