



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/18697/2014

THE IMMIGRATION ACTS

Heard at Manchester Piccadilly
On 10 March 2015

Decision and Reasons Promulgated
On 16 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

ABDUL AWUAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Afzal of IIAS Levenshulme
For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge V A Osborne promulgated on 2 December 2014 which dismissed the Appellant's appeal under the Rules and under Article 8 of ECHR .

Background

3. The Appellant was born on 24 February 1982 and is a national of Bangladesh.
4. The Appellant first entered the United Kingdom as a student in 2006 and his leave continued until 2009 when he made an in time application for further leave to remain. In June 2010 the Appellant applied for and was granted a certificate of approval to marry and on 21 September 2010 he married Gemma Pope who is a British citizen.
5. On the basis of his marriage the Appellant made an application for leave to remain as the spouse of a settled person which was refused without a right of appeal.
6. On 20 April 2011 the Appellant's representatives requested reconsideration of the decision supported by a statement of additional grounds.
7. On 4 April 2014 the Secretary of State refused the Appellant's application and made directions for his removal. The refusal letter gave a number of reasons:
 - (a) The Appellant could not succeed under the new Immigration Rules that addressed Article 8 either as a partner or parent under Appendix FM.
 - (b) There were no insurmountable obstacles to the parties enjoying family life together in Bangladesh
 - (c) The Appellant could not meet the requirements of the Rules that addressed private life under paragraph 276ADE.
 - (d) All of the Appellant's circumstances were considered including his previous convictions, the fact that he had stayed after his leave expired, there had been no significant delay in considering his case by the Respondent. There was no basis on which the Appellant was entitled to a grant of discretionary leave.

The Judge's Decision

8. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Osborne ("the Judge") dismissed the appeal against the Respondent's decision on the basis of the papers submitted to the Tribunal the Appellant's representatives having indicated that an oral hearing was not required as the Appellant's spouse was 'unwell'. The Judge in her decision :
 - (a) Summarised the reasons given in the refusal letter(paragraphs 15-23).
 - (b) Summarised the grounds of appeal which were in essence that the marriage was genuine and that the Appellant and his wife were entitled to live in the United Kingdom as she is a British citizen; that the Appellant had an extensive private life; that the application was made before the new Rules came into force in July 2012.(paragraphs 24-26)

- (c) Summarised the documentary evidence at paragraphs 27-32.
 - (d) At paragraphs 35-44 the Judge considered the application by reference to Article 8 outside the Rules and section 117B of the Nationality Immigration and Asylum Act 2002.
 - (e) Concluded that in the circumstances the decision to remove was proportionate.
9. Grounds of appeal were lodged arguing that the judge had erred in considering the application by reference to the new Rules and that the reasoning in relation to Article 8 was inadequate. On 27 January 2015 First-tier Tribunal Judge Bird gave permission to appeal on both grounds.
10. At the hearing I heard submissions from Mr Afzal on behalf of the Appellant that in essence:
- (a) The Judge had been wrong to consider the new Rules.
 - (b) The Judge failed to give adequate weight to the delay in making a decision in this case relying on **FH [2009] EWCA Civ 385**
11. On behalf of the Respondent Ms Johnstone submitted that :
- (a) The judge in her decision took into account the period the Appellant had spent in the United Kingdom (paragraph 26) and at paragraphs 36 -37 confirmed the lack of evidence of the Appellant's private life confirming that she could only proceed on the basis of the evidence before her.
 - (b) The Judge was obliged to apply section 117B and was entitled to reach the conclusion she did.

Caselaw

12. In relation to the materiality of errors of law I have looked at the recent Court of Appeal decision in **SSHD v AJ (Angola) [2014] EWCA Civ 1636** that an error of law by the First-tier Tribunal may be considered immaterial –
- “ ... if it is clear that on the materials before the Tribunal any rational Tribunal must have come to the same conclusion or if it is clear that, despite its failure to refer to the relevant legal instruments, the Tribunal has in fact applied the test which it was supposed to apply according to those instruments.”

Finding on Material Error

13. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
14. This was an application made on 20 April 2011 for a grant of leave outside the Rules it having been accepted that the Appellant could not meet any of the Rules then in force for leave as a spouse and having had his last application for leave as a spouse rejected with no right of appeal.

15. The first ground argued was that the judge erred in considering this matter under the new Rules in force after 9 July 2012 given that the application in issue was made on 20 April 2011.
16. I am satisfied that while the Judge set out in some detail that the refusal letter did consider the Appellant's application by reference to the new Rules given that the Appellant could not meet the suitability requirements or the income requirements there is nothing in her findings to suggest that the Judge assessed the case by reference to Appendix FM in her decision. At paragraph 33 she made reference to how Article 8 had been encompassed into the Rules and the test for eligibility in EX.1 but in essence her findings related to Article 8 using the guidance set out in Razgar as Mr Afzal had to concede in opening his case and therefore I do not find an error of law in her assessment of the relevant law that applied.
17. Mr Afzal argues that the Judges findings were inadequate. I remind myself of what was said in **Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC)** about the requirement for sufficient reasons to be given in a decision in headnote (1): *"Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge."*
18. I remind myself that this was an application that the Judge dealt with on the papers at the Appellant's request. This appeal was not an opportunity to argue caselaw and grounds or indeed advance evidence that was not placed before the Judge. The Judge indeed commented on the dearth of evidence in the case before her, all of the statements were barely a page long and while there was reference to medical issues in relation to both the Appellant's spouse and her mother and it having been made clear (if that was required) that such claims should be supported by medical evidence, no such evidence was provided. The Judge was therefore entitled to state that she dealt with the case on the basis of the evidence before her.
19. I am satisfied that the Judge on the basis of the inadequate evidence before her reached conclusions that were open to her in her assessment under Article 8. She found that there was no documentary evidence to support the claims made in relation to either the Appellant's spouses diabetes or her mother suffering from MS and therefore she did not accept that the facts were as claimed. She identified that the claim of the Appellant and his wife that it was their right to choose where they lived because the wife was a British citizen was not guaranteed under Article 8 (paragraph 33). There was no evidence placed before her from any source to show why it would not be reasonable to expect the Appellant's wife to live with him in Bangladesh. The reference to the 'political situation' was unsupported by any background material. The Judge's assessment of the nature and quality of their family life was limited by the dearth of evidence and the fact that they had chosen a paper hearing and therefore such evidence was never expanded upon.
20. The Judge also properly self directed herself in relation to the provisions of section 117B in relation to the public interest considerations which were relevant given that the Appellant and his spouse were, for example , on their own evidence not self sufficient as the Appellant's wife was on benefits and they were financially supported by his sister (paragraph 41) . The judge under section 117 was also required to give

little weight to a relationship formed while the Appellant was in the United Kingdom unlawfully (paragraph 43)

21. While Mr Afzal now argues that the Judge failed to give adequate weight to the delay in making a decision in this case I have read the grounds of appeal that the Judge had before her and nowhere was it argued that delay was a material consideration in this case. As indicated above this hearing is not an opportunity to re litigate the case more effectively and while reliance is now placed on **FH** there are other cases which make clear that delay is not determinative such as **ES (Togo) and Anr v SSHD [2008] EWCA Civ 230** where a delay of 5 years in making a decision in relation to leave to remain was found by the Court of Appeal not to mean that the Respondents' decision was unsustainable.
22. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

23. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

24. **The appeal is dismissed.**

Signed

Date 15.3.2015

Deputy Upper Tribunal Judge Birrell