



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

Appeal Number: IA/19738/2014

THE IMMIGRATION ACTS

Heard at North Shields

**Decision and Reasons
Promulgated**

On 4 December 2014

On 28 May 2015

Before

**THE PRESIDENT, THE HON. Mr JUSTICE McCLOSKEY
DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

Between

**MUHAMMAD FAISAL SHAIKH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Soltani, Solicitor, Iris Law Firm

For the Respondent: Mr Kingham, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant was granted entry clearance on 10 May 2006 as a student. There followed successive decisions to vary and thereby extend his leave to remain. The most recent grant of leave to remain was made to him as a Tier 2 (General) Migrant on 6 September 2009, expiring on 8 August 2015. That period of leave was however subsequently curtailed so that it would expire instead on 11 February 2014 in the light of the material change in the Appellant's circumstances, that followed from his redundancy.

2. The Appellant applied on 10 February 2014 for a further variation of his leave to remain, relying upon his “private life” in the UK. That application was refused on 10 April 2014, and in consequence the Respondent decided to remove him to Pakistan by reference to s47 of the 2006 Act.
3. The Appellant lodged an appeal against both of those immigration decisions. His appeal was dismissed under the Immigration Rules and on Article 8 grounds by First Tier Tribunal Judge Scobbie in a decision that was promulgated on 26 August 2014. Permission to appeal to the Upper Tribunal was granted to the Appellant by First Tier Tribunal Judge Taylor on 6 October 2014 on the basis it was arguable the FtT had failed to give adequate reasons for its decision.
4. Thus the matter came before us on 4 December 2014. Since the issues that were raised by this appeal were closely comparable to those raised by another appeal before us which was the subject of special directions and programming, we heard argument upon this appeal, but reserved our judgement, in order to await the outcome of that other appeal. The parties were told that further directions would be given for the hearing of this appeal, only if we considered it appropriate to do so. Both parties were given liberty to apply for further directions, but neither has done so.
5. The decision of the Tribunal in AA/05666/2014 has now been promulgated, and reported as AM (s117B) Malawi [2015] UKUT 00260. We do not consider it necessary to hear further argument from either party upon this appeal in the light of that decision, and thus we now deliver our reserved judgement.

The challenge

6. Although the grant of permission is framed in terms of the narrow challenge that the FtT failed to give adequate reasons for its decision, it was common ground before us that the reasons given do allow the reader to understand why that decision was reached. We accept that the real challenge that is advanced in the grounds is the argument that the FtT failed to properly undertake the assessment required by ss117A-D of the 2002 Act, and that had this been done it would have been bound to find on the facts of this case that there were positive factors that weighed significantly in the Appellant’s interests to the extent that the decision to remove him was disproportionate. Thus it was argued before us that the FtT was bound to give positive weight to the following;
 - i) The Appellant’s ability to speak English,
 - ii) The Appellant’s ability to support himself through the offer of employment that he held from Rolls Royce plc, which was itself a post that appeared on the Tier 2 Shortage Occupation List, and
 - iii) The fact that the Appellant had formed the “private life” relied upon at a time when he had been lawfully resident in the UK.

The decision of the FtT

7. The FtT noted that the Appellant did not qualify under the Immigration Rules for the variation of leave that he sought. There is no challenge to that aspect of the decision. In considering paragraph 276ADE the FtT noted that the Appellant would have no difficulty in returning to Pakistan where his parents and family lived. The Appellant simply saw a greater advantage if he were able to pursue his career in the UK.
8. The FtT went on to consider the Article 8 appeal outside the Immigration Rules, as it was invited to do. It was noted that the decision to curtail the grant of leave to remain from 8 August 2015 so that it expired on 11 February 2014 was not the decision that was under appeal. The decision to curtail the Appellant's leave had been taken by the Respondent as a result of the decision by the Appellant's employer to terminate his employment as a result of a decision to make his post redundant. The FtT noted that whilst the Appellant had brought an appeal against his employer's decision to the Employment Tribunal, the hearing of that appeal had been concluded, and all that was awaited was the receipt of the reserved decision¹. This was not a case that raised the need for a claimant to remain in the UK to participate properly and effectively in litigation with a reasonable prospect of success. It was also not argued that his presence in the UK was required in order to receive that decision, or to undertake any step required to complete the appeal process before that Tribunal. The appeal was instead advanced on the basis that it was disproportionate to remove the Appellant to Pakistan, when he had an offer of employment in the UK from Rolls Royce plc.
9. We are satisfied that on the evidence before the FtT, ultimately the Appellant's case was no more than that he should be relieved of the obligation to return to his family in his country of origin, and make application for entry clearance to the UK as a work permit holder in the usual way, although he could do so in safety.
10. Put shortly the FtT was not satisfied that the existence of the offer of employment relied upon was sufficient reason to justify any grant of leave outwith the Immigration Rules, or, to render the Appellant's removal from the UK disproportionate. In the course of the brief reasons that were given reference was made to s117B of the 2002 Act and to the public interest in the maintenance of effective immigration control.

Decision

11. Section 19 of the Immigration Act 2014 introduced into the Nationality Immigration and Asylum Act 2002 a new Part 5A, headed "Article 8 of the ECHR: Public Interest Considerations". These new provisions are set out in

¹ The appeal was not argued before us on the basis that the Appellant had been successful in his appeal to the Employment Tribunal. It was accepted that he had not, and that the Employment Tribunal had held that his was a genuine redundancy, and that he was fairly selected for it, without any discrimination.

sections 117A-D of the 2002 Act, which were brought into effect on 28 July 2014 pursuant to Article 3 of The Immigration Act 2014 (Commencement No 1, Transitory and Saving Provisions) Order 2014. This appeal came before the FtT on 15 August 2014, and thus the new provisions applied to it.

12. Whilst the FtT did make express reference to s117B in the course of its decision, it did not set out in full therein the provisions of either s117A, or, s117B. That was not however, of itself, an error of law sufficient to require the decision to be set aside and remade. It is not necessary for the FtT to set out in full in each of its decisions each of the statutory provisions that it seeks to apply to the evidence placed before it in the course of an appeal. What is required of the FtT is no more, and no less, than that its decision should demonstrate that the relevant statutory provisions have been taken into account, and that they have been applied to the facts of the particular appeal; AJ (India) v SSHD [2011] EWCA Civ 1191 at [43]. That is a requirement of substance, rather than of form.
13. In our judgement s117A(2), required the FtT (in particular) to have regard to the considerations listed in s117B. The FtT had no discretion to leave one of those considerations out of account, if that was a consideration raised by the evidence before it. In principle there could, however, be no error of law in the failure by the FtT to have regard to one of those considerations if the evidence did not raise it. The recurring truism that every appeal is case sensitive and fact specific applies.
14. In this case there was no period during which the Appellant had been living in the UK unlawfully, so there was no obligation to consider s117B(4). His immigration status, although lawful, has always been the result of grants of limited periods of leave and was, thus, “precarious” at all times.
15. Upon their proper construction neither s117B(2) nor s117B(3) grants any form of immigration status to an individual who does not otherwise qualify for that status under the Immigration Rules. There was therefore no error of law in the FtT’s approach to the issues of English language fluency and financial independence in the context of the consideration of s117B. The Appellant could obtain no positive right to a grant of leave to remain from either s117B(2) or s117B(3), whatever the degree of his fluency in English, or the strength of his financial resources. The evidence bearing on these issues was plainly referred to in the decision and we are satisfied that it was taken into account, even if ultimately little weight was given to it.
16. Whilst the guidance to be found upon the proper approach to a “private life” case in the decisions of Patel [2013] UKSC 72, and Nasim [2014] UKUT 25 was not referred to expressly by the FtT, the decision is consistent with it. The appeal did not rely upon the core concepts of moral and physical integrity. Even if the offer of well paid employment that the Appellant wished to be able to accept was one that appeared at any relevant date upon the Shortage Occupation List, it could not be argued

that this was sufficient of itself to render disproportionate the decision to remove. This was, rather, simply another factor to which the judicial review standard of rational weight applied.

17. Accordingly the criticisms advanced of the decision in the grounds are revealed upon examination to be no more than a disagreement with the FtT's assessment of the proportionality of the removal decision. No material error of law has been demonstrated. We dismiss the appeal accordingly.

Conclusions

In our judgement, and notwithstanding the terms in which permission to appeal was granted, there is no merit in the grounds advanced. It was open to the Judge to reach the conclusion that he did, for the reasons that he gave. Those reasons were adequate and disclosed that the relevant statutory provisions had been considered and applied. The complaints made about the Judge's approach reveal no material error of law that requires his decision promulgated on 26 August 2014 to be set aside and remade. It is accordingly affirmed.

Signed

Deputy Upper Tribunal Judge JM Holmes
Dated 18 May 2015