



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

Appeal Number: IA/26624/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17<sup>th</sup> September 2015**

**Decision & Reasons  
Promulgated  
On 01<sup>st</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEVER**

**Between**

**MR MOHAMMED TAHIR CHAUDHRY  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr. Richardson of counsel  
For the Respondent: Mr Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 12<sup>th</sup> August 1971 is a citizen of Pakistan. The Appellant had made application to remain in the United Kingdom outside of the Immigration Rules. The Respondent had refused that application on 12<sup>th</sup> June 2014. The Appellant had appealed that decision and his appeal was heard by First-tier Tribunal Judge Morris sitting at Taylor House on 20<sup>th</sup> February 2015. The judge had dismissed the appeal.
2. Grounds of Appeal were contained within an application for permission to appeal dated 6<sup>th</sup> March 2015. Permission to appeal was granted by First-

tier Tribunal Judge Colyer on 28<sup>th</sup> April 2015. It was found to be arguable that the judge should have considered Article 8 outside of the Immigration Rules in this case. The Respondent opposed such application by letter dated 22<sup>nd</sup> May 2015. Directions were issued for the Upper Tribunal to firstly decide whether an error of law had been made or not and the matter comes before me in accordance with those directions.

### **Submissions on Behalf of the Appellant**

3. It was submitted that there had been an insufficient assessment of Article 8, the decision simply contained within one paragraph.

### **Submissions on Behalf of the Respondent**

4. Mr Tarlow submitted there were no errors of law made by the judge.
5. At the conclusion I reserved my decision to consider the documents and submissions raised. I now provide that decision with my reasons.

### **Decision and Reasons**

6. The judge had set out in detail the Appellant's case and evidence presented by both himself and witnesses. The judge had also taken account of all the documentary evidence. He had correctly initially considered whether the Appellant met any of the requirements of the Immigration Rules.
7. It was noted by the judge at paragraphs 16 to 17 that the Appellant did not have family life in the UK and it was conceded by his own Counsel that he could not meet the requirements of Appendix FM. The Appellant did not meet the requirements of paragraph 276ADE. The Appellant's Counsel's submissions essentially were that it could be argued the Appellant had not entered the UK illegally. Further, that paragraph 276ADE did not take account of the potential strength of a private life and that whilst it was acknowledged that Section 117B stated little weight should be given to private life built up when in the UK unlawfully, the Section did not say no weight.
8. The judge had made very clear his findings upon the credibility of the Appellant at paragraph 24. In short he had concluded the Appellant was devoid of any credibility. That conclusion was entirely open to the judge and a reasonable conclusion. The judge had examined the central plank to the Appellant's claim to be allowed to remain permanently based on his private life, that being his relationship with a female British citizen and her 10 year old child. At paragraph 28 having examined the evidence in that respect the judge found no credibility attaching to that central point of the Appellant's case. All that remained of the Appellant's claim to enjoy a private life in the UK was that he had made some friends and did work at a mosque. The judge had correctly found the Appellant did not fall within the Immigration Rules.

9. At paragraph 33 the judge concluded, having examined all the evidence that there was nothing not already adequately considered within the terms of the Immigration Rules that could lead to a successful Article 8 claim. He was perfectly entitled to reach such a conclusion. **SS Congo [2015]** notes that there must be exceptional circumstances for a consideration of Article 8 ECHR outside of the Rules where the claim is based on private life developed where immigration status is unlawful or precarious or the case involves deportation. The Appellant had entered the UK unlawfully and frankly his immigration history was appalling. There was nothing exceptional in the Appellant's circumstances as carefully examined by the judge to suggest that those same facts needed to be considered over again outside of the Rules under Article 8. Indeed the judge's phraseology at paragraph 33 suggests a less stringent test applied than that within **SS Congo**.
10. In any event, even if the plethora of case law in this area suggested that the judge might have looked at the case outside of the Rules under Article 8 then any starting point would have been Section 117B of the 2002 Act when considering the issue of proportionality under **Razgar**. The facts and findings in this case demonstrate that extremely poor immigration history and an individual who fails each and every test within Section 117B of the 2002 Act and whose private life, upon which any credibility could be placed, was extremely limited. This is a case where no reasonable judge would have concluded other than immediate removal was not disproportionate. Accordingly therefore in any event there would have been no possibly different outcome and therefore no material error of law.

### **Notice of Decision**

11. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Lever

### **TO THE RESPONDENT** **FEE AWARD**

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

Signed

Date

Deputy Upper Tribunal Judge Lever