



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

Appeal Number: IA/40934/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 17 July 2015
Prepared 17 July 2015**

**Decision & Reasons
Promulgated
On 7 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**HASRAT ALI
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Presenting Officer

For the Respondent: Mr J Jaisiri, Counsel, instructed by Legal Rights Partnership

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant, a national of Pakistan, date of birth 1 February 1989, appealed against the Secretary of State's decision dated 29 September 2013 to refuse leave to enter under paragraph 321(A) of the Immigration Rules HC 395. That appeal came before a panel consisting of First-tier Tribunal Judge levins and First-tier Tribunal Judge Haria (the panel) who promulgated the panel's decision on 27 January 2015. By that decision the panel allowed the appeal under Appendix FM and under Article 8 of the ECHR outside of the Immigration Rules.
3. The Secretary of State sought permission to appeal on or about 10 February 2015 and permission to appeal was given by First-tier Tribunal Judge Levin on 1 April 2015.
4. There was intended to be a hearing of this matter on 23 June 2015 but the matter did not proceed in order to enable the Secretary of State to bring forward amended grounds to add to those that had formed the basis on which permission was granted. Those additional grounds were provided. At the outset of the hearing, having heard the parties' submissions, it became clear that as a matter of law had the panel properly taken into account the provisions under the Rules, then the appeal could not have succeeded under Appendix FM as they thought. In those circumstances, whilst Mr Jaisiri for proper and obvious reasons wished to support that part of the panel's decision, it being in the favour of his client, the fact of the matter was the panel could never have reached such a decision in law had they properly considered Appendix FM and in particular Section S-EC of Appendix FM.
5. In the circumstances I allowed the amendment but did so on the basis that having considered the matter with the parties it became clear that ultimately that issue was not going to affect the outcome of the relevant issue in the appeal, namely whether or not the claim was properly considered under Article 8 outside of the Immigration Rules.

6. Put very shortly but succinctly, Mr Duffy argued that the panel being well aware that the Claimant had put forward documentation which was false/misleading and therefore there was a sustainable decision against the Claimant under paragraph 322(1) of the Rules which should have taken that matter fully into account in either applying Section 117B of the Immigration Act 2014 amending the NIAA 2002. It was, he argued, a matter relevant to the maintenance of effective immigration controls and a matter in the public interest. Mr Duffy also went on to argue that on a fair reading of the determination there was no assessment made by the panel of that issue in terms of its importance to the public interest and to the overall assessment of proportionality.
7. Mr Jaisiri's response was that quite simply this was not a matter put to the panel by the Secretary of State. Therefore they did the best they could on the information put before them. Having checked the Record of Proceedings I am satisfied that it was a reliable record and fairly summarised the evidence and the positions argued by the parties before the panel.
8. Given the findings of the panel and the decision against the Claimant, with reference to paragraph 321(A) of the Immigration Rules, it can hardly be said that the panel had not understood the significance of that matter when they found that false documents were submitted. Therefore, it was impossible to take the view that the panel must have somehow forgotten that issue when, as they went on to state in paragraph 62 of the decision, they were taking into account the issue of proportionality and whether the Secretary of State's decision was proportionate to the legitimate aim of maintaining immigration control.
9. I agree with Mr Duffy that the panel did not overly analyse the issue of the Claimant's deception, which they had accepted had been established, when assessing the public interest. However the panel did take into account a range of factors, illustrated, for example at paragraphs 57 to 59 of the decision, in terms of the interests of the child, the British nationality

of the child, the child's mother in the clear context identified by ZH (Tanzania) [2011] UKSC 4 and in Zoumbas [2013] UKSC 74. In those circumstances, on a fair reading paragraph 64 to 67, Mr Duffy has at least a sustainable basis to complain the panel failed to fully address the issue of deception. However, looked at in the round it seemed to me that the panel, with the knowledge which they had, bearing in mind the findings they had made, the position over the deception could not have been ignored. The weight they gave to those matters when assessing the public interest was ultimately for the panel.

10. In the circumstances, having regard to the case law of R (Iran) [2005] EWCA Civ 982 it would be wrong to interfere with their decision, albeit it certainly could have been better expressed. Rather it seemed to me that a different panel faced with the same material would have almost inevitably have reached the same decision. Thus if there was a material error of law it did not seem to me that it would have led to any different outcome.
11. It is trite law that parties to a decision are entitled to adequate and sufficient reasons: those should be fairly summarised and stated in a decision. To the extent that that is not as clearly put as it should have been, was a criticism that should be made of the panel. However for the reasons given above I am satisfied that this was a case where their mistakes do not demonstrate any arguable error of law which would have led to any different decision.
12. The Original Tribunal's decision stands. The appeal of the Secretary of State is dismissed.

Anonymity Order

No anonymity direction was sought and in the circumstances it does not seem to me matters arising are likely to give rise to any material prejudice or disadvantage to the child of the family and accordingly no order is made.

NOTICE OF DECISION

The appeal is dismissed.

Signed

Date 2 August 2015

Deputy Upper Tribunal Judge Davey