



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

Appeal Number: IA/40994/2013

THE IMMIGRATION ACTS

Heard at Glasgow

**on 11 November 2014 and on 7 January
and 17 February 2015**

Determination

Promulgated

on 18 February 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHAMMAD FAYAZ

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Ghafar, Ghafar & Co., Solicitors (on 7 January 2015 and 17 February 2015)

For the Respondent: Mrs O'Brien, Senior Presenting Officer, Home Office

This case came before the President, Mr Justice McCloskey, on 2 and 3 September 2014, after which the following was issued in his name:

RULING AND DIRECTIONS

1. By a decision dated 30 August 2013, the Secretary of State for the Home Department (the "*Secretary of state*"), the Respondent herein, refused the Appellant's fresh human rights claim. It was not certified

under paragraph 353 of the Immigration Rules. The Appellant appealed unsuccessfully to the First-tier Tribunal (the "FtT"). Permission to appeal to this Tribunal was granted on the basis that the FtT may have erred in law in its application of section 55 of the Borders, Immigration and Asylum Act 2009 to the Appellant's grandchildren.

2. The letter of decision refers to grandchildren living in Pakistan, something which was duly confirmed by the evidence of the Appellant's son (identified above) to the FtT: see [13]. This evidence also asserts the existence of grandchildren in the United Kingdom. In [20] of the AIT determination promulgated on 06 March 2014, the Appellant is recorded as having testified that he had "*between 8 and 10 grandchildren*" in Pakistan. It would appear that there is a bundle of evidence (to which I do not have access at present). This, presumably, contains some detail about the Appellant's grandchildren in the United Kingdom.
3. The Appellant did not attend on the scheduled day of hearing, 02 September 2014. The hearing was adjourned to enable his son, Mr Ali, to obtain written evidence corroborating his assertion that the Appellant has been an in-patient for the last three months. I relisted the appeal this morning. A letter/report, signed by Dr Monteith of the Victoria Infirmary, Glasgow, confirms that the Appellant was admitted on 29 May 2014 and continues to be admitted, albeit his discharge from hospital is in prospect. I was also able to ascertain that Mr Ali's assertion that the solicitor who formerly represented the Appellant is no longer available on account of disciplinary reasons is apparently correct.
4. In these circumstances, I adjourned the hearing of the appeal. I did so with some reluctance, having regard to the protracted history, which now spans almost ten years. I directed that Mr Ali take immediate steps to secure alternative legal representation for the Appellant.
5. The appeal will be relisted for hearing on the first available date.

FURTHER RULING AND DIRECTIONS

6. The case was listed before me on 11 November 2014. There was no appearance by or for the appellant. Nothing had been heard from him, his son or any representative in the meantime. I observed that the foregoing ruling and directions and the notice of hearing had been sent to the last address provided by the appellant, which was the office address of his previous representatives. The respondent's Senior Presenting Officer, Mrs O'Brien, provided the home address which the appellant last made known to the respondent. This corresponds with his address shown on documents produced in the First-tier Tribunal. I adjourned the hearing again. The ruling and directions were re-issued to that home address along with notice of the hearing on 7 January 2015.
7. On 7 January 2015 Ms Ghafar of Ghafar & Co, Solicitors, appeared for the appellant. She had received instructions through the appellant's son

on 24 December 2014. She had been provided with only a few papers (which included the ruling and directions above). The appellant has been discharged from hospital. She sought time to take his instructions directly, to obtain further papers, and to prepare fully. It seemed unlikely that a file could be obtained from previous representatives. She had contacted the respondent's office after the holiday period, but not in time for copy papers to be made available to her. A short further adjournment would suffice.

8. Mrs O'Brien observed that while no criticism was made of Ms Ghafar, it had been made clear on 2 and 3 September 2014 that any further representation was to be arranged without delay. The circumstances suggested that the appellant and his family were only too willing for further time to go by. The underlying facts were not complicated. The first question as to error of law was not the whereabouts of grandchildren and other family members, but what evidence was before the First-tier Tribunal.
9. I granted a further adjournment, and issued this further ruling and directions.

DETERMINATION AND REASONS

10. On 17 February 2015 the appellant was again represented by Ms Ghafar and the respondent by Mrs O'Brien.
11. Ms Ghafar submitted evidence that the appellant has seven children and twelve grandchildren in the United Kingdom. Four of his sons and seven grandchildren live in Glasgow. He lives with one of his sons and four of the grandchildren. Two daughters and five grandchildren live in Walsall. One son and five grandchildren live in Pakistan.
12. Referring to the determination by Judge Clough, Ms Ghafar pointed out that the appellant is recorded at paragraph 5 as saying that he had fifteen grandchildren in the UK, which reflects an error either by the appellant or by the judge. From paragraph 17 it is evident that the appellant lives with four of the grandchildren. It can be worked out from paragraph 24 that five of the grandchildren live in Pakistan. Ms Ghafar accepted that there is no principle that Article 8 entitles someone to live in the UK simply because the greater part of his family is here. However, she said that the evidence disclosed a number of children and there should have been further consideration of their circumstances and best interests. There is plainly a very close tie with the grandchildren in this country particularly the ones with whom the appellant lives. It was to be expected that his removal would have an undesirable effect on those children. Ms Ghafar accepted that there did not appear to have been any substantial evidence or submissions about that aspect of the case. She submitted that due to a rift in the family the appellant did not have the same connection with the grandchildren in Pakistan, whom he has never met, and that there was an error such that the case required a fresh hearing.

13. Mrs O'Brien submitted that although the family background emerged in evidence, no case based on the best interests of grandchildren in the UK figured in the appellant's Article 8 grounds or submissions in the First-tier Tribunal. His case had centred on health issues and on matters more of a private life rather than a family life nature. The judge had made an adverse credibility finding about the alleged family rift.
14. I indicated that no error of law was disclosed and the determination of the First-tier Tribunal would stand.
15. The appellant has made his extensive family in the UK, including his grandchildren, part of his case over a long period including earlier appeals. However, no meaningful case based on any potentially adverse effects of his removal on his grandchildren was put to the First-tier Tribunal. The fact that he has grandchildren here was no more than part of the background, noted by the judge.
16. The judge reached adverse conclusions on credibility, in particular regarding the alleged rift with family members in Pakistan. The grounds directed against those findings did not attract a grant of permission from the First-tier Tribunal, and the appellant did not seek to advance them further with the Upper Tribunal. On the evidence before her and her legitimate conclusions from it there was no issue about the best interests of any children which could have had any bearing on the outcome.
17. The determination of the First-tier Tribunal shall stand.
18. No anonymity order has been requested or made.



Upper Tribunal Judge Macleman
17 February 2015