



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: OA/05948/2014

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 19<sup>th</sup> May 2015

Decision & Reasons Promulgated  
On 22<sup>nd</sup> May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

MUNAWAR ALI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: The sponsor, Nokhez Anjum  
For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. On 15<sup>th</sup> April 2015 Judge of the First-tier Tribunal Grant-Hutchison gave permission to the appellant to appeal against the decision of Judge of the First-tier Tribunal Obhi in which she dismissed the appeal on immigration and human rights grounds against the decision of the respondent to refuse entry clearance as a returning resident in

accordance with the provisions of paragraphs 18(ii) and 320(9) of the Immigration Rules.

2. The grounds do not take issue with the judge's conclusion that the appellant could not comply with the provisions of sub-paragraph (ii) of paragraph 18 of the Immigration Rules because he had been away from the United Kingdom for over six years when the Rule only permitted two years' absence. However, it was contended that the appellant had strong family ties with his wife and children living in the United Kingdom in his property in Derby. It was also stated that he had been away for over two years because of the illness of his mother. He asked that his Article 8 claim should be considered compassionately taking into consideration the documentation and evidence supporting his original application and the sponsor's oral evidence.
3. Although the grounds do not point to any arguable error in the decision Judge Grant-Hutchison thought that –  

“Although the judge dismisses the appeal on human rights grounds the appellant's circumstances were not considered under Article 8 and arguably could be material to the outcome”.
4. In a response sent on 20<sup>th</sup> April 2014 under Rule 24, the respondent referred to paragraph 15 of the decision in which the judge found that the appellant's circumstances were neither exceptional nor compelling. The respondent thought that the findings were adequately reasoned and any further consideration of Article 8 factors in the appellant's claim would not result in a different outcome.

### **Error on a point of law**

5. At the hearing before me in the Upper Tribunal the sponsor was unrepresented. I therefore explained to her the nature of the proceedings and particularly the need for the decision of the First-tier Judge to show an error on a point of law if that decision were to be overturned. The sponsor spoke good English and said that she understood the explanation. With the decision in front of her, I drew her attention to paragraphs 14 and 15 in which the judge set out reasons for concluding there were no exceptional or compelling circumstances in the appellant's case and no evidence of any ongoing relationship between the appellant and his wife or children. The sponsor indicated that she had no further comment to make on that part of the decision. She also accepted that the appellant could not meet the requirements of the Immigration Rules as he had been outside the United Kingdom for over two years. After Ms Johnstone had made brief submissions based upon the response, I asked the sponsor if she had any further comment to make and she said she did not.
6. At the end of submissions and after considering the matter for a few moments I indicated that I was not satisfied that the decision showed an error on a point of law for the reasons which follow.

### **Conclusions**

7. The decision shows that the judge considered the evidence put before him including the oral testimony of the sponsor. The judge evidently noted the reasons given for the appellant's absence from the United Kingdom but was entitled to reach the

conclusion that it had not been shown what was actually wrong with the appellant's mother or that her state of health had altered in the time that he was away. Noting that the appellant had other siblings in Pakistan who could have cared for his mother and no reason had been given for the appellant not returning to the United Kingdom even to visit his family, the judge properly concluded that there was no ongoing relationship between the appellant and his wife or children and that it was difficult to see how the refusal decision had interfered with any family life between the parties. On this basis the judge was entitled to dismiss the human rights appeal having examined the circumstances in which the parties came to separate, the length of that separation and the communications between them in the interim. Any fuller consideration of these issues by, for example, specifically going through the *Razgar* five stage tests and more extensive examination of the best interests of the children would not have produced a different result. No material error is shown.

### **Notice of Decision**

The decision of the First-tier Tribunal does not show an error on a point of law and shall stand.

### **Anonymity**

Anonymity was not requested nor do I consider it appropriate in this appeal.

Signed

Date

Deputy Upper Tribunal Judge Garratt