



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

Appeal Number: AA/09465/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 May 2016**

**Decision & Reasons  
On 29 July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MR AH  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss E King, Counsel, instructed by JD Spicer Zeb Solicitors  
For the Respondent: Mr I Jarvis, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Afghanistan, date of birth [ ] 1994, appealed against the Respondent's decision, dated 29 October 2014, to refuse to vary leave to enter or remain and to make removal directions under

Section 47 of the Immigration, Asylum and Nationality Act 2006. The appeal against the decision came before First-tier Tribunal Judge A M S Green whose decision [D], on 30 March 2016, dismissed those appeals with reference to both refugee and protection claims as well as Article 8 ECHR.

2. Permission was given by FtT Judge Pullig, on 22 April 2016. There really was no argument that the Appellant ever met the requirements of paragraph 276ADE of the Immigration Rules HC 395 as amended. The only issue related to whether or not a claim fell to be considered under Article 8 ECHR outside of the Rules on the basis that the Respondent's decision was not compliant with those requirements.
3. The judge in looking at the matter, [D 38] found that there was nothing exceptional about the case to warrant looking at the matter outside of the Immigration Rules.
4. It is clear that the judge did have regard to the family life claim and there was no challenge to his conclusion that family life rights or that part of private and family life rights was not engaged. Rather, the complaint was that the judge did not carry out a detailed examination of all the evidence, including matters not actually adduced before him, to satisfy himself that the Respondent's case was made out. Thus it was said the judge failed to make enquiries into the extent to which, although he did not know of it, the Appellant might have been in work and earning. It was said that the Appellant came to the hearing before the judge with payslips but it is common ground that they were not produced to the judge, nor was Miss Manning, who appeared for the Appellant, informed of the matter and nor did she put the earnings issue before the judge.
5. I find the "omission" by the judge simply does not disclose any error of law by the Original Tribunal in failing to address a matter which had not been raised for consideration. Nor was the issue of employment a Robinson

obvious point, *R v SSHD ex parte Robinson* [1997] 3 WLR 1162, not least in the context that the parties would have been aware with reference to Section 117A-C of the Nationality, Immigration and Asylum Act 2002 to such matters.

6. It appears that also the Appellant did not call any live witnesses to speak to his activities in the UK, the significance of his private life in the UK whether to himself or to others, or the part he played in the community other than some correspondence which, it is accepted by Miss King, the judge made reference to.
7. It was said by Miss King that the judge also failed to investigate the extent to which there had been past fallings to trace the Appellant's family circumstances in Afghanistan. The fact of the matter was that those were not issues that were raised, unsurprisingly given that the Appellant had already had an asylum claim determined in 2010 and the Appellant was appeals rights exhausted in December 2010.
8. Whilst I have sympathy for the position that Miss King is in, in the light of the facts, she did not have conduct of the matter below, did not settle the grounds of appeal, did not seek to amend the grounds of appeal and she was left seeking to make a case without any substantial material to work with. Having considered her arguments it seemed to me that the length of time the Appellant had been in the United Kingdom, his status whilst he was here and the circumstances in which he came to be here must have been considered on a fair reading of the decision as a whole. It did not seem to me there was any evidence, had the judge been specifically pointed to, that any different decision would have been arrived at.
9. In the circumstances I find that even if this matter was to go back for a further consideration, assuming there was any material error, there is nothing to indicate any other Tribunal properly considering the same evidence would have come to any different decision.

**Notice of Decision**

10. The Original Tribunal's decision does not disclose any error of law. The Original Tribunal decision stands.
11. The appeal is dismissed
12. The anonymity direction that was made was not the subject of representations but I am satisfied it should be continued for the purposes of this appeal.

**ANONYMITY**

No anonymity order was sought.

Signed

Date 27 July 2016

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in promulgation which is due to the file being mis-located