



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/29099/2014**

THE IMMIGRATION ACTS

**Heard at Bradford
On 23rd February 2016**

**Decision & Reasons
Promulgated
On 17th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR MUHAMMAD ASHFAQ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in person
For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Muhammad Ashfaq, is a citizen of Pakistan born 10th April 1969. He entered the UK in February 2011 with a Tier 4 (General) Student visa valid until 10th May 2014.
2. On 9th May 2014 the Appellant made application for further leave to remain. That application was refused by the Respondent on 2nd July 2014, together with the issue of removal directions to Pakistan.
3. The Respondent refused the Appellant's application because she was of the view that he could not fulfil the Immigration Rules as he could not

produce a valid CAS, nor could he fulfil the English language requirement of the Rules because he had failed to pass the relevant English language test.

4. The Appellant appealed the Respondent's decision and his appeal came before the First-tier Tribunal (Judge Lloyd-Smith) which in a decision promulgated on 12th September 2014, dismissed the appeal.
5. The appeal before the FtT had been dealt with by way of a paper hearing at the Appellant's request. However written submissions were before the FtT and part of those submissions claimed that the appeal should be allowed on the basis of the Appellant's Article 8 ECHR rights. He suffers from diabetes.
6. In reaching its decision the FtT said the following at [11]:

“No submissions were made on the basis of a human rights claim and there was no evidence adduced to indicate that refusal of leave to remain would be disproportionate and against the legitimate aim of immigration control”.

7. The Appellant therefore sought permission to appeal the FtT's decision. In granting permission DJ Lewis said the following:

“The judge wrote at paragraph 11 that no submissions were made on the basis of a human rights claim. This did not take into account the extensive arguments on Article 8 of the 1950 Convention set out in the Appellant's Grounds of Appeal prepared by his solicitors. The omission to consider Article 8, albeit in the context of the Immigration Rules and in the light of **Gulshan [2013] UKUT 00640 (IAC)** and **R (on the application of) Nagre v SSHD [2013] EWHC 720 (Admin)**, was an arguable error of law”.

Thus the matter comes before me for consideration of whether the FtT's decision contains an error of law, requiring it to be set aside and remade.

The UT Hearing

8. Before me Mr Diwnycz appeared for the Respondent. The Appellant attended and represented himself. Mr Diwnycz submitted properly, in my view, that he could not defend the FtT's decision. Plainly the judge had erred in his failure to take into account, not only the Appellant's Grounds of Appeal, but also the evidence contained in the submissions made by his representatives. This resulted in the Appellant being deprived of a fair hearing. Mr Diwnycz submitted that the appropriate course in this appeal would be to remit the matter to the First-tier Tribunal for a fresh hearing in which all the evidence was considered. No findings of fact should remain. The Appellant was content to agree to this course.
9. I find I am in agreement with Mr Diwnycz's submissions. The FtT's failure to consider the Appellant's Article 8 ECHR rights amounts to an irregularity in the proceedings and is one which is capable of making a material

difference to the outcome of the appeal. In these circumstances it is appropriate that the matter be remitted to that Tribunal to re-make the decision.

10. The original hearing before the FtT was by way of a paper hearing. However the Appellant may wish to attend the rehearing before the FtT and since he lives in Leicester, it is appropriate that the matter be remitted to the Birmingham Hearing Centre.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve a material error of law, as set out above. I set aside the decision of the First-tier Tribunal to dismiss the appeal. The matter will be remitted to the First-tier Tribunal (not Judge Lloyd-Smith) for a full rehearing with fresh findings of fact being made.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Roberts