Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/43529/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decisions and Reasons Promulgated**
On 2 February 2016	**On 18 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

MUHAMMAD OMER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Appellant in person
For the Respondent: Mr Wild, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-Tier Tribunal. I find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

DECISION AND REASONS

1. The Appellant is a national of Pakistan. On 26 July 2014 he applied for leave to remain on the basis of his private life. His application was refused by the Respondent on 14 October 2014 and a decision was made to refuse to vary his leave to remain. The Appellant appealed against that decision and the

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appeal was dismissed by First-tier Tribunal Judge Gurung-Thapa in a decision promulgated on 2 March 2015. The Appellant sought permission appeal against that decision and permission was granted by First-tier Tribunal Judge Page on 6 May 2015 on the basis that he found it difficult to understand how the First-tier Tribunal could have reached the conclusion that it would cause the Appellant no more than inconvenience to conduct complex litigation from Pakistan.

The Grounds

2. The Grounds assert that the First-tier Tribunal overlooked important evidence and made a decision that was not open to it on the evidence. The Appellant contends that his claim to whistleblowing is in jeopardy if he is not given leave to remain and that it is in the public interest that he remain in the UK. It is asserted that the First-tier overlooked the nature of a whistleblowing case and that the Appellant was unfairly dismissed from his employment. It is said that there is a public interest because a decision in his favour would have a profound effect on his former employer, the damages that were recovered for clients and on the insurance industry and public. It is further argued that since his representative was acting pro bono he could not spend the time on the case that a paid representative would and it would not be possible for him to deal with all of the witnesses and issues. The Appellant asserts that he would only require a short period of leave to remain.

The Rule 24 Response

3. The Respondent submits that the First-tier Tribunal directed itself appropriately and that he would have modern means of communication to enable him to instruct representatives to act on his behalf. Further it was open to him to seek entry clearance to appear in person. The conclusion was sustainable on the evidence.

The Hearing

4. The Appellant sought to rely on the assistance of a MacKenzie friend, Mr Bryan Slater. Mr Wild had no objection and I explained the role to him. The Appellant sought to admit evidence in relation to his litigation in the Employment Tribunal which post-dated the hearing before the First-tier Tribunal. I refused to admit that evidence in relation to the issue of whether there was an error of law in the decision of the First-tier Tribunal as it was not in existence nor before the First-tier Tribunal at the date of the decision.

5. Neither party produced any authorities. The Appellant argued that there was an error of law in the decision of the First-tier Tribunal. He asserted that his removal would lead to unjustifiably harsh consequences. He said that there was no decided case on this matter. He referred me to a number of pages in the bundle before the First-tier Tribunal which he said the Judge should have taken into account which showed how complex the case was. He said

it would be impossible for him to interview consultants and witnesses from abroad.

6. Mr Mills submitted that in child contact cases there was authority that discretionary leave should be granted when an appellant was pursuing contact proceedings. However, if an applicant won custody or contact with child it had a direct bearing on whether he qualified for leave to remain. In this case the litigation made no difference to whether he was allowed to remain in the UK and there was no causal connection. The exceptional circumstances policy covered all different cases. It was an effective remedy to pursue an appeal outside the UK. The First-tier Tribunal in this case had considered whether there were exceptional circumstances and concluded that it was not impossible to conduct proceedings. There was no irrationality in this conclusion. The Judge had in mind the key issue which was based on the opinion of Mr Slater that the Appellant had to be in UK to conduct the claim and whether that was sufficient for grant outside the Rules. He reached the conclusion that it was not impossible for him to conduct proceedings. Perversity was a very high threshold and was not reached. The Respondent had no specific policy outside the Rules other than specifically in relation to child contact proceedings. The Appellant had not shown that he could not conduct proceedings from outside the UK.

Discussion and Findings

7. The Appellant entered the UK on 18 September 2006 as a student with entry clearance valid until 31 December 2009 and was granted further leave until 8 October 2012. He was then granted leave to remain as a Post-Study Worker on 27 July 2012 until 27 July 2014 when he made an application for further leave to remain on the basis of his private life. The First-tier Tribunal found that his private life claim could not succeed under the Immigration Rules and there is no argument with that finding. The Appellant argued that his removal would be a breach of his private life ties under Article 8 ECHR because he would be unable to pursue his claim to have been unfairly dismissed in the Employment Tribunal.

8. The First-tier Tribunal set out the evidence in relation to that claim at paragraphs 18 to 24 of the decision. It is clear from paragraphs 18 and 19 that the Judge properly apprehended the nature of that claim. It is also clear from paragraphs 20 to 24 that the Judge apprehended the arguments as to why the Appellant considered that he could not effectively pursue that litigation from abroad. The First-tier Tribunal accepted at paragraph 29 that the Appellant had established a limited private life in the United Kingdom. She found that he did not have significant ties in the UK and that, in relation to his litigation, at paragraph 33:

> “..I find that while it would be inconvenient for him to conduct proceedings from Pakistan it would not be impossible to do so. He has legal help, albeit currently this is on a pro bono basis, from Mr Slater. It also remains open to the appellant to make representations to the respondent requesting a short period

of leave in order to continue with his litigation. The Appellant’s concern that he and his family might be harmed in order to silence him, I find is speculative.”

9. It is instructive, at this juncture, to consider what the Appellant’s protected rights were under Article 8 ECHR. In **Patel and Others v Secretary of State for the Home Department [2013] UKSC 72** the Supreme Court considered the ambit of private life claims and held at [57] that:

> It is important to remember that article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ's call in *Pankina* for "common sense" in the application of the rules to graduates who have been studying in the UK for some years (see para 47 above). However, such considerations do not by themselves provide grounds of appeal under article 8, which is concerned with private or family life, not education as such. The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8.

10. In **Nasim and others (Article 8) [2014] UKUT 25 (IAC)** it was held that the judgments of the Supreme Court in **Patel and Others v Secretary of State for the Home Department [2013] UKSC 72** serve to re-focus attention on the nature and purpose of Article 8 of the ECHR and, in particular, to recognise that Article’s limited utility in private life cases that are far removed from the protection of an individual’s moral and physical integrity.

11. The Appellant in this case had not been granted leave to pursue litigation. Whilst there are cases, notably **RS (immigration and family court proceedings) India [2012] UKUT 00218,** where the courts have held that a breach of Article 8 may occur when a claimant is unable to pursue contact proceedings before removal, those cases relate to a breach of the right to family life which it said would occur as a result of removal. I have not been referred to any authority in relation to a right to remain to pursue litigation unrelated to the immigration decision to remove.

12. The Appellant is not relying on any other aspect of his private life ties save for to pursue litigation. He is effectively saying that he should not be removed because of the litigation. Part and parcel of that is an argument that he should be allowed to remain to defend his name because he has been unfairly dismissed. Arguably, this is an aspect of moral rather than physical integrity. The courts have consistently held that there is a very high threshold for the engagement of Article 8 in physical and moral integrity cases (**Razgar [2003] EWCA Civ 840, KR (Iraq) v SSHD 2007 EWCA Civ 514)** amounting to a flagrant or fundamental breach of the right**.**

13. In the circumstances, I do not consider that the First-tier Tribunal misdirected itself in concluding that there would be no breach of Article 8 because it would be inconvenient but not impossible for the Appellant to conduct litigation from Pakistan. I also find that this conclusion was open to

the First-tier Tribunal on the evidence before it. The evidence of Mr Slater who was representing the Appellant in his employment litigation is recorded at paragraph 23 of the decision and he said that it would not be impossible to proceed but would be prejudicial given the nature of the case. In the circumstances I find that the conclusion of the First-tier Tribunal that the Respondent's decision to remove was proportionate was neither perverse nor inadequately reasoned.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Signed Date

Deputy Upper Tribunal Judge L J Murray