



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

Appeal Number: HU/03905/2015

**THE IMMIGRATION ACTS**

**Heard at Stoke  
On May 18, 2017**

**Decision & Reasons Promulgated  
On May 26, 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

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

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs Sood, Counsel (Direct Access)

For the Respondent: Mr Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Pakistan. He applied for entry clearance as a spouse. The respondent refused his application on July 24, 2017.
2. The appellant appealed that decision on August 20, 2015 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
3. His appeal came before Judge of the First-tier Tribunal Warren (hereinafter called the Judge) on August 25, 2016 and in a decision promulgated on August 30, 2016, the Judge dismissed his appeal. That decision was appealed on September 22, 2016 and Judge of the First-tier Tribunal Martins granted permission to appeal on December 7, 2016 and the matter came before me on the above date for an error of law hearing.

4. I do not make an anonymity order in this case.

### **PRELIMINARY ISSUES**

5. Mrs Sood submitted skeleton argument in which she wished to raise an additional ground of “procedural unfairness” and in oral submissions she also sought to raise the adequacy of former counsel.
6. I indicated to Mrs Sood that neither of these issues had been raised in the grounds of appeal and where there was a criticism of counsel there was a duty on the new advocate to take this issue up with the previous representative. This had not been done and whilst I noted she could not locate the previous counsel’s/representatives details that was not a matter for me today. The appellant had been represented at the original hearing and had not sought an adjournment even though one was available, if required. The other ground she therefore raised I indicated was not something that I was prepared to deal with.
7. I invited Mrs Sood to address me on the key issue namely whether the Judge approached the issue of paragraph 320(11) HC 395 unfairly.

### **SUBMISSIONS**

8. Mrs Sood adopted her skeleton argument and submitted that the Judge had not approached paragraph 320(11) HC 305 correctly. The court in PS (paragraph 320(11) discretion: care needed) India [2010] UKUT 440 (IAC) laid down the correct approach. She submitted the Judge made no reference to the case law and the judge had failed to identify any aggravating features over and above the appellant being an immigration offender. The Judge merely found the appellant had contrived to frustrate the intentions of the Rules. The Judge utilised the previous decision which was something that had not been served on the appellant until late in these proceedings. She invited me to find an error in law.
9. Mr Bates opposed the application and submitted the appellant found himself in the situation he did because when he was supposed to be studying here he in fact was either working or accessing Facebook. He had been stopped in 2012 and refused entry. He could have challenged that decision but chose not to. The starting point for the Judge was therefore that the appellant had been refused entry due to his immigration history. There was no requirement for a fresh decision as this was simply an entry clearance application. The appellant knew he was not attending lectures or studying and did nothing. The judge had regard to this and the fact he was working in circumstances where he was not allowed to because he was not studying. The finding was open to the Judge.
10. Mrs Sood submitted that it was too big a jump to say why he had not appealed the earlier decision at the time but the Judge knew why he had not from the evidence presented. She repeated her key submissions.

### **FINDINGS**

11. The appellant applied for entry clearance. The respondent refused the appeal under paragraph 320(11) HC 395 which allows the respondent to refuse to refuse an application where the appellant has “contrived in a significant way to frustrate the intentions of the Rules”.
12. There is no dispute the appellant was earlier refused entry clearance on November 24, 2012 when he returned to this country. Mrs Sood has sought to challenge that evidence today but as Mr Bates quite properly submitted that decision was not the matter up for appeal. The appellant was stopped by immigration control and refused entry with a right of appeal. He did not appeal that decision and Mrs Sood’s submission that we should not speculate why he did not appeal does not address the key issue in this case. Firstly, when the Judge considered the evidence it included handwritten notes from the interview and a contract of employment. These were documents served at the hearing but documents served in advance. Counsel, who represented the appellant, had obviously not seen the documents and was given an opportunity to consider them and take instructions. He did not seek an adjournment-if he had the Judge made clear she would have allowed it. In fact, counsel relied on parts of the interview to support the appellant’s appeal.
13. The Judge was entitled to make the findings on the documents that he did.
14. The issue in this appeal is whether the Judge erred in his approach to the appellant’s previous behaviour and in finding that the respondent was entitled to refuse the application under paragraph 320(11) HC 395.
15. The Tribunal in PS set out how such cases should be considered. There is no error in failing to refer to this case as long as the principles are applied.
16. In PS the Tribunal held that, in exercising discretion under paragraph 320(11) of HC 395, as amended, to refuse an application for entry clearance in a case where the automatic prohibition on the grant of entry clearance in paragraph 320(7B) is disapplied by paragraph 320(7C), the decision maker must exercise great care in assessing the aggravating circumstances said to justify refusal and must have regard to the public interest in encouraging those unlawfully in the United Kingdom to leave and seek to regularise their status by an application for entry clearance.
17. Mr Bates made the point that the appellant had actually not been in the United Kingdom but had been trying to re-enter unlawfully because he had not complied with the terms of his visa. Whichever way the judge looked at it he had to be satisfied there were aggravating features. The respondent’s own guidance provides a non-exhaustive list. Included within that list is “previous working in breach on visitor conditions within short time of arrive in the UK”. The guidance goes on to state that all cases must be considered on their merits.
18. The Judge considered the history at paragraphs [12] to [18] of his decision. The Judge concluded the appellant did not study and did not comply with

the terms of his visa. Bearing in mind this was the basis he was originally granted entry into the country He could only work specified hours if he was studying. The fact is he was not studying and he admitted as much. The Judge's findings at paragraph [17] are clearly findings open to the Judge who based on those findings was dealing with an appellant who had been here in contravention of the terms of his visa. It is suggested it isn't his fault he college stopped lectures but it was his fault he did not tell the respondent. He attempted to return without having told the Home office about his changed circumstances.

19. Although no case law was quoted I am satisfied the Judge applied the spirit and principles of PS. There is no error in law.
20. The other issues raised on fairness and adequacy of counsel have no merit for the reasons given earlier.

**NOTICE OF DECISION**

21. There was no error in law and I uphold the decision.

Signed

Date April 12, 2017

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

I make no fee award as I dismiss the appeal.

Signed

Date April 12, 2017

Deputy Upper Tribunal Judge Alis