



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13104/2015

THE IMMIGRATION ACTS

Heard at Field House
On 21 December 2017

Decision and Reasons Promulgated
On 22 December 2017

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

NAJAM MASOOD QURESHI
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Pennington-Benton, Counsel instructed by Synthesis
Chambers
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Pakistani national born in Saudi Arabia on 30 October 1981. He challenges the determination of First-tier Tribunal Judge Bartlett promulgated on 17 March 2017 dismissing his appeal against the respondent's decision of 24 November 2015 to refuse his application for a leave on long residence and article 8 grounds.
2. The judge found that the appellant could not meet the requirements of paragraph 276B(v) as he had been in the UK in breach of the immigration laws by spending some 6 ½ years here without lawful leave. It was conceded on his behalf that he could not meet the requirements of Appendix FM with regard to family life as he had no partner and his son was not a British national and did not reside in the UK. The judge then

considered paragraph 275ADE(1)(vi) and concluded that the appellant's specific circumstances were such that there were very significant obstacles to his reintegration. Instead of allowing the appeal, however, the judge then went on to consider the article 8 claim outside the rules and dismissed the appeal.

3. Permission was granted by Judge Davies on 10 October 2017 on the basis that the judge had arguably erred in dismissing the appeal after having found that the requirements of paragraph 276ADE(1)(vi) had been met.
4. The respondent, in her Rule 24 response, did not oppose the application for permission and invited the Tribunal to determine the article 8 claim at a hearing. The matter then came before me.

The Hearing

5. The appellant attended the hearing but did not give evidence. On his behalf, Mr Pennington-Benton submitted that given the respondent's concession on the error of law issue, the only matter was disposal. He submitted that the judge had made sound findings of fact and no issue was taken with those. The error applied only to the manner in which the law had been applied; specifically, on how the facts were assessed outside the rules. He submitted that the finding on paragraph 276ADE(1)(vi) should be upheld and that the appeal should be allowed.
6. In response, Mr Tarlow confirmed that the respondent did not seek to go behind the judge's findings of facts and invited me to re-make the decision in the light of those findings.
7. At the conclusion of the hearing I reserved my decision which I now give.

Conclusions

8. The respondent has properly conceded that Judge Bartlett made an error of law in reaching contradictory conclusions on article 8. The judge appears to be under the misapprehension that the appeal could not be allowed under the rules even though paragraph 276ADE(1)(vi) had been satisfied. That is an error of law and the decision to dismiss the appeal is set aside.
9. I was invited to re-make the decision based on the judge's findings of fact pertaining to 276ADE(1)(vi). These are contained at paragraphs 20-28.
10. The judge found that the appellant spent the first 17 years of his life in Saudi Arabia where he was born to Pakistani parents and that he then

came to the UK in 1999. He had spent half of his life in each of those two countries. He attended a Pakistani school in Saudi Arabia until he left aged 17 and he could speak, read and write Urdu. He was brought up with Pakistani customs and traditions. His father had returned to Pakistan but they were estranged. The appellant had two brothers in Saudi Arabia, a brother in the UK and a sister in Pakistan. His mother lives in Saudi Arabia but does not have a permanent visa. She makes regular visits to Pakistan where she has a sister. The appellant had also visited Pakistan for holidays. He was a professional poker player and would be unable to continue this in Pakistan. He had IT qualifications and would be able to find employment in Pakistan where his family members, excluding his father, would assist him. The appellant had a son who lived in Austria with his former partner. They visited the UK regularly to enable contact to be maintained. The appellant was not particularly religious and was not a practising Muslim. The judge found that the case was finely balanced but there was enough to find in the appellant's favour.

11. Whilst I take the view that the findings are generously made, the respondent has not sought to challenge them and they are therefore preserved. It follows that since the appellant has been found to meet the requirements of paragraph 276ADE(1)(vi), his appeal must be allowed.

Decision

12. The First-tier Tribunal made errors of law such that the decision is set aside. I re-make the decision and allow the appeal under the immigration rules.

Anonymity

13. No request for an anonymity order was made and I see no reason to make one.

Signed



Upper Tribunal Judge

Date: 21 December 2017