



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/00148/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Bradford

Decision & Reasons

Promulgated

On: 19 October 2017

On: 20 October 2017

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

BELAL SAEED SALEM AMIEH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Mrs Peterson, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is from the Palestinian authority. He arrived in the UK in May 2008 when he was 21.
2. In a decision dated 3 May 2017 the First-tier Tribunal dismissed the appellant's appeal on human rights grounds, against the respondent's decision dated 21 December 2015 to refuse him leave to remain.
3. In a decision dated 15 June 2017 the First-tier Tribunal granted the appellant permission to appeal, observing it to be arguable that the First-tier Tribunal should have (i) undertaken a fuller analysis of the facts given the extent of the evidence submitted, and (ii) taken into account the impact of the respondent's policy prior to July 2012.

4. The matter now comes before me to determine whether the First-tier Tribunal made an error of law.

Hearing

5. The appellant attended the hearing unrepresented but with several supportive friends. He relied upon the grounds of appeal prepared by his previous solicitors and submitted that the First-tier Tribunal appeared to have made no clear findings regarding his fears upon return to Pakistan.
6. Mrs Peterson submitted that the decision is adequately reasoned and does not contain an error of law.
7. At the end of the hearing I reserved my decision which I now provide with reasons.

Error of law discussion

8. When the decision is read as a whole, I am satisfied that First-tier Tribunal made three material errors of law.
9. Before turning to these I propose to address the second basis upon which permission was granted. I do not accept that the First-tier Tribunal erred in law in failing to take into account a previous policy of the respondent. The First-tier Tribunal was not obliged to consider for the purposes of an Article 8 balancing exercise in 2017, a policy of considerable vintage and no longer applicable. In any event, the policy would not assist the appellant because it states that he requires six years discretionary leave to qualify for indefinite leave to remain. Even assuming that discretionary leave continued pending the appeal process, the appellant has not accrued six years discretionary leave from 2012.
10. I now turn to the matters I consider to be errors of law. First, the First-tier Tribunal has not made adequate findings regarding the appellant's fear of persecution if returned to Palestine. This was outlined in his witness statement, the witness statement of Ms Allot and in a skeleton argument prepared on his behalf. It is clear from the First-tier Tribunal's own summary of the appellant's case at [13] that he continued to fear arrest and detention if returned to Palestine. It is therefore difficult to understand why this was not fully addressed and why at [28] the First-tier Tribunal found that the appellant did not rely upon a fear of persecution. Although the First-tier Tribunal referred to the previous Tribunal decision dismissing the asylum appeal at [31], it did not make any updated credibility findings, using that decision as a starting point.
11. Second, the First-tier Tribunal erred in law in its approach to the appellant's private life. I acknowledge that the First-tier Tribunal

directed itself to many relevant factors in the appellant's favour. In particular, the First-tier Tribunal took into account the appellant's private life in the UK at [9-11 and 34-36] which included: a period of lengthy residence of nine years in the UK from the age of 21; a finding that he "*has worked hard*" and supported himself financially when he has had his own business; he has a network of supportive friends and customers in the UK; and is able to speak English.

12. I accept the submission in the grounds of appeal that the First-tier Tribunal failed to take into account the evaluative nature of the concept of 'precarious' as set out in Rhuppiah v SSHD [2015] EWCA Civ 803. The First-tier Tribunal noted at [34] that the appellant's immigration status "*has been precarious*", without addressing the submission that his private life was established and developed at a time when he had discretionary leave to remain and had entirely immersed himself or 'settled' into UK life in terms of language, friendships and employment, such that his private life should be considered to be strong and / or of a special and compelling character.

13. Third, the reasons provided for concluding the balancing exercise against the appellant are inadequate. The conclusion itself is set out in brief terms at [37] - "*however in all the circumstances, I am satisfied that it is proportionate that his application for further leave to remain is refused*". Whilst it is not necessary to structure an Article 8 decision following the 'balance sheet' approach referred to by Lord Thomas in Hesham Ali v SSHD at [82], it is important to set out reasoned findings as to the strength of the private life in question and to balance this against the strength of any countervailing factors or public interest considerations. The First-tier Tribunal's findings appear to accept that the appellant has a very strong private life but there is inadequate reasoning as to why this is outweighed by public interest considerations.

Conclusion

14. When the errors identified above are considered together I am satisfied that the First-tier Tribunal's findings are inadequately reasoned, and the First-tier Tribunal has materially erred in law.

Disposal

15. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Decision

16. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
17. The appeal shall be remade by the First-tier Tribunal.

Signed: Ms Melanie Plimmer
2017
Judge of the Upper Tribunal

Dated: 19 October