



**Upper Tribunal
(Immigration and Asylum Chamber)**
Number: IA/33540/2015

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
on 10 July 2017**

**Decision promulgated
on 12 July 2017**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**IUH
(anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Patyna instructed by Middlesex Law Chambers.
For the Respondent: Mr Singh Senior Home Office Presenting Officer .

ERROR OF LAW FINDING AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge Moore ('the Judge') promulgated on 17 November 2016 in which the Judge dismissed the appeal on human rights grounds.

Error of law

2. The Judge considered an adjournment request at the beginning of the hearing before the First-tier Tribunal which was refused. One of the reasons the adjournment was sought was because it was submitted the appellant's solicitors had only received a recent ETS report the day before the hearing. The Judge noted at [4] "

"Mr Sued-Ali on behalf of the Respondent objected to the adjournment. He stated that the Respondent's bundle was issued on 18 July 2016 and that the bundle included full details as to the ETS report and therefore that issue had been raised prior to today and the appellant had ample opportunity to raise it with his legal representatives."

3. In putting weight upon such a submission and concluding that the appellant had had ample opportunity to instruct his solicitors with specific regard to the ETS report on deception issue, the Judge appears to have misdirected himself in fact and in law. The factual element is that the latest report was in the form of a witness statement from Hillary Rackstraw dated 25 October 2016 which was not in existence on 18 July 2016. It is plausible that that document would only have been disclosed the day before the hearing giving very little time for the appellant's instructions to be sought upon the same.
4. The misdirection in law is the need for the Judge to have considered the fairness of the decision. The Judge found that the interests of justice required the matter to proceed as the appellant was not prejudiced, but it cannot be seen how such a judgment could be made if the facts are not properly understood. The Judge was clearly of the view that more time was not required which is not adequately reasoned in the decision.
5. A more fundamental error appears in the Judge's assessment of the merits of the article 8 claim. The Judge found the appellant was in a subsisting relationship with his partner [24]. In the same paragraph the Judge notes that the partner is a refugee from Pakistan. Notwithstanding this fact, the Judge concludes at [33]:

"33. I do not accept that there are very significant obstacles to the appellant's return to Pakistan. The relationship between himself and the partner started in the full knowledge that he had no leave to remain in the UK. I accept that there has been a short family life between the appellant and his partner and young son in the UK. However, I am satisfied that the appellant could enjoy family life in Pakistan if he was to be joined by his partner and his child and the appellant's stepson....."

6. Although the Judge finds there was little evidence made available surrounding the partner's circumstances and reason for grant of refugee status, it is not disputed that such a grant was made. The Judge fails to adequately analyse how a person who appears on the face of it to have been granted refugee status as a result of an inability to return to Pakistan could be reasonably expected to travel to Pakistan to settle with the appellant to enable them to continue their family life there.

7. The adjournment request also sought a period to obtain medical evidence in relation to the child who was diagnosed as suffering from Downs Syndrome at birth. More recent reports have been provided in relation to this aspect. The Judge did not allow additional time but then found there will be adequate medical services available in Pakistan.
8. It was accepted by both advocates that the errors of law identified above and in the grounds, are material to the extent there can be no preserved findings of the First-tier Tribunal.
9. As extensive fact-finding is required based on the proper analysis of the factual matrix of this case the only option, in accordance with the Presidential Practice Direction, is for the appeal to be remitted to the First-tier Tribunal sitting at Taylor House to be determined afresh by a judge of that tribunal other than Judge Moore.

Decision

10. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to the First-tier Tribunal sitting at Taylor House to be determined on a date and by a judge of that Tribunal, other than Judge Moore, appointed by the Resident Judge in accordance with the operational requirements of that centre.**

Anonymity.

11. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....

Upper Tribunal Judge Hanson

Dated the 1⁰th of July 2017