Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/09413/2016

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
on 5 October 2017	**On 9 October 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

K J
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr G Dewar, Advocate, instructed by Bespoke Solicitors, Harrow
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent refused the appellant's claim on protection and all other grounds for reasons set out in her decision dated 29 August 2016.

2. First-tier Tribunal Judge Pears dismissed the appellant's appeal for reasons explained in his decision promulgated on 6 February 2017.

3. The appellant sought permission to appeal, insisting on his claim, on rather vague and generalised grounds.

4. FtT Judge J Grant-Hutchison refused permission on 19 May 2017, on the view that the grounds disclosed no arguable error of law.

5. The application was renewed to the UT on the same grounds. On 10 July 2017 UT Judge Chalkley granted permission "on the basis that it appears from the record of proceedings that the judge was addressed on article 8 … but has not dealt with it … although the appellant appears to have been in the UK for some 12 years. There is simply no arguable error of law identified elsewhere in the application".

6. Mr Dewar (who had been instructed at quite short notice, and is not the author of the grounds) submitted thus:

   i. Failure to engage with submissions on article 8 was a material error. The decision at ¶3 recorded that the case was advanced in part on private life, but the "observations, findings of credibility and fact and conclusions" at ¶88 – 105 made no mention of it. The case should therefore be remitted to the FtT.
   ii. It was anticipated that the presenting officer's position was that if error was found, the UT should proceed today to make a fresh decision. The appellant had advised Mr Dewar this morning that he had with him a large amount of further written evidence. That had not yet been considered or prepared for presentation by his advisers. It would be undesirable to proceed immediately to a fresh decision. There were likely to be motions for admission of further evidence. Whether in the FtT or in the UT, that should preferably take place at a further hearing.
   iii. I noted that the decision says at ¶109 that the appellant had not shown very significant obstacles to his integration into Pakistan and did not meet the requirements of ¶276ADE of the rules in respect of his private life. Mr Dewar said that did not go far enough and that there was no resolution of article 8, private life, outside the rules, an obvious omission, given the 12 years the appellant has spent in the UK, as observed in the grant.
   iv. The decision at ¶3 – 4 was not explicit as to whether private life, outside the rules, had been relied upon. If necessary, instructing agents could be asked to clarify.

7. Mr Matthews submitted thus:

   i. The grounds of appeal to the UT made no complaint of failure to consider any particular submission on article 8. They included only a vague reliance on "a strong relationship with family, friends and the local community … family, social and cultural ties in the UK".
   ii. Notwithstanding the terms of his appeal grounds, the appellant had not claimed to have any immediate or even extended family members in the UK.
   iii. In terms of identifying error of law in the decision, the grounds were meaningless.
   iv. The appellant's counsel in the FtT had provided a skeleton argument, which made no mention of private life as a head of claim.
   v. The claim made in the FtT, as recorded in outline at ¶3 – 4 of the decision, in terms of private life was that the same factors were relied upon as for the protection claim. They were inextricable. It followed from that claim being

decided against the appellant that there were no obstacles to integration, so it automatically fell at the same time.

vi. The decision at ¶110 is not well worded, but it concludes that "… relevant factors have already been assessed and a repeat evaluation is unnecessary … there can be no grant of leave based on article 8 outside the rules". That was all that was needed.

vii. If error was found, the tribunal should apply the directions it had issued with the grant of permission. There was a presumption that re-making of the decision would proceed at the same hearing. The appellant had been reminded of the requirements of any application for admission of fresh evidence, and had not complied.

viii. If remade on such evidence as was before the FtT, the case on private life outside the rules was bound to fail.

8. In course of submissions, I checked the file and advised parties as follows. The usual pre-printed form headed "record of proceedings" was within the tagged part of the file, but the handwritten record on that form said simply, "appellant gave evidence …. submissions, decision reserved … ". Presumably a fuller note had been kept (as is required) and might have been seen by the permission judge, but I was unable to locate it.

9. Mr Dewar in reply to the presenting officer's submissions said that the grant of permission suggested that the record showed there had been a submission, even if not in the skeleton argument or recorded in the decision, based on the appellant's 12 years in the UK and on article 8 outside the rules, and that ¶109 – 110 of the decision did not resolve it.

10. I reserved my decision.

11. Mr Dewar's submission made the best of the unpromising materials on which he had to base it. However, I am not persuaded that the making of the decision by Judge Pears involved the making of an error on a point of law, and certainly not on any issue which might justify the decision being set aside.

12. Even if there had been some nominal reliance on article 8 and private life outside the rules, which was far from clear, the appellant had advanced nothing in the FtT which had the remotest prospect of success.

13. Given failure to meet the private life rules and the precarious nature of the appellant's immigration status, and applying part 5A of the 2002 Act to the facts, the appellant's private life had to be given little weight. There was nothing before the FtT by which it might rationally have allowed the appeal on that basis.

14. If an error had been found, there would have been much force in the respondent's submission that a fresh decision should be substituted, based on the evidence before the FtT. However, that matter becomes academic.

15. I had reached the above decision in course of drafting, prior to a final check of the contents of the file.

16. Separately from the form headed "record of proceedings" mentioned above, mixed among the parties' bundles and other papers loosely kept, there is the handwritten record. It is on pages not attached together, but it was capable of being reassembled in order. There is a page headed "A", apparently of preparatory notes, pages numbered 1 – 19, and 3 further pages, not numbered but obviously following on.

17. The record confirms that the case focused on protection issues.

18. The record of the submissions for the appellant begins at p.19 and opens:

> "Asylum … + article 2 & 3
>
> No separate article 3 or 8 re illness
>
> Article 276 ADE (i) (vi)
>
> Article 8 family life no
>
> Outside rules – no".

19. The reference to "article 276ADE" is obviously a slip and should read "paragraph 276 ADE" [of the immigration rules].

20. Counsel in the FtT had correctly perceived and conceded that any article 8 private life argument outside the rules was hopeless.

21. The decision of the First-tier Tribunal shall stand.

22. The FtT made an anonymity direction, although it is not said that one was sought, and the reason was not stated. The matter was not addressed in the UT. In those circumstances, anonymity has been preserved in this decision.

Hugh Macleman

5 October 2017
Upper Tribunal Judge Macleman