



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

Appeal Number: HU/00691/2016

THE IMMIGRATION ACT

Heard at Field House

**Decision & Reasons
Promulgated**

On 10th December 2018

On 17th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Raja Muhammad Rafi

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Mardner Counsel instructed by Law Lane Solicitors

For the Respondent : Ms Isherwood Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Allen promulgated on the 13th April 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Coker on 30th October 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The material part of the grant of leave provides:-

1 It is arguable the First-tier Tribunal Judge failed to place adequate weight on the fact that the appellant has been lawfully in the UK for more than 10 years. Although considered under paragraph 276 ADE the First-Tier Tribunal Judge does not appear to have considered paragraph 276B and has placed little weight on the private life established during this time in the UK without giving detailed reasons.

Immigration history

5. The appellant, date of birth 7 March 1970, entered the United Kingdom on 28 October 2006 on a work permit visa which gave him leave until 1 January 2010. There are references in the papers to the fact that the appellant entered the UK on the 28th October 2007. Whatever the date of entry the appellant's leave expired and he did not have leave for a period of time after 1 January 2010.
6. On 12 September 2011 the appellant applied for indefinite leave to remain as a work permit holder. That application was refused. The appellant appealed against that decision and, whilst his appeal under the rules was dismissed, his appeal was successful on the grounds of family and private life rights. The appeal appears to have been heard in or about May 2013. As a result of his appeal being successful the appellant was granted discretionary leave from 4 May 2013 to 8 October 2015.
7. Therefore the appellant did not have leave from 1 January 2010 until 4 May 2013. For that period of time the appellant was not lawfully in the country.
8. The appellant, as his leave to the 8th October 2015 was nearing its end, made an in-time application for leave on the grounds of Article 8 of the ECHR, family and private life. That was refused on the 22nd of December 2015. In refusing the application it was noted that the appellant did not have any family in the United Kingdom. Consideration was therefore being given to his private life. Specific consideration was given in the letter of refusal to paragraph 276 ADE and it was found that the appellant did not meet the requirements of the Immigration Rules. Further consideration was given as to whether or not there were any factors warranting consideration of article 8 private life outside the rules and it was determined that there were no factors warranting such consideration.
9. The appellant appealed against the decision and the appeal was first heard by First-tier Tribunal Judge Lucas. However by decision in the Upper Tribunal promulgated on 6 November 2017 the decision of Judge Lucas was set aside and the matter was remitted back to the First-tier Tribunal to be heard afresh.

10. The matter was heard by First-tier Tribunal Judge Allen on 13 March 2018. By decision promulgated on 13 April 2018 the judge dismissed the appellant's appeal.
11. The appellant has appealed against that decision. Thus the matter appears before me to determine whether there was any material error of law in the decision of Judge Allen.

Consideration

12. In the leave granted there is a suggestion that as the appellant has lawfully been in the United Kingdom for more than 10 years, consideration needs to be given to paragraph 276 B of the Immigration Rules.
13. As pointed out above whilst the appellant may have entered the United Kingdom in 2006 or 2007, he was not lawfully in the United Kingdom for the period 1 January 2010 until the beginning of May 2013. Paragraph 276B (i) (a) requires that an individual has to have at least 10 years continuous lawful residence in the United Kingdom. Whichever starting point one takes the appellant does not have 10 years continuous lawful residence and therefore does not meet the requirements of paragraph 276B(i)(a).
14. Otherwise with regard to paragraph 276 ADE at the date of the application the appellant would have been 44/45 years of age. The appellant therefore did not meet the majority of the requirements with regard to age in respect of paragraph 276 ADE and otherwise no evidence had been submitted that there were very significant obstacles to his integration into life in Pakistan.
15. The judge has noted that despite what the appellant had said previously he did in point of fact have family in Pakistan namely a wife and children. His parents, four brothers and two sisters were also in Pakistan. The appellant was regularly in contact with his family members. The appellant did not have any family in the United Kingdom or any relationship of such significance as to engage article 8 family life.
16. The appellant wished to continue to work in the United Kingdom as he earned more than he did in Pakistan and he could therefore assist and help his family if he remained working in the United Kingdom.
17. The judge in the decision has gone on to consider the appellant's private life in the United Kingdom. In that regard the judge considered paragraph 117B of the Nationality, Immigration and Asylum Act 2002.
18. The judge had noted in the evidence that the appellant had stated that his English was sufficient for him to deal with the customers that came to the butchers shop at which he worked. However he preferred to use an interpreter in the hearing. The appellant had made reference to being involved in the local mosque and attending regularly. However when questioned about what he did at the local mosque the appellant made reference to attending community events such as weddings and Asian groups. There was no evidence of a wider integration into United Kingdom life. It was noted that the appellant had never taken the test of the Life in the UK although he had taken ESOL English test.

Submissions

19. The appellant's representative sought to argue that in paragraph 32 where the judge had stated that the removal of the appellant would be 'inevitably disruptive' the judge in carrying out the balancing exercise with regard to proportionality had failed to take account of the fact that such interference would be so significant as to outweigh any public interest in removing the appellant. The representative sought to argue that the judge had failed to carry out the balancing exercise properly. Reliance was placed upon section 117 B because the appellant had always maintained himself and was not dependent on public funds; he was a man of good character; he had made attempts to integrate; and the interference in his private life would be so significant as to outweigh the public interest.
20. It was submitted that given the age of the appellant and the length of time that he had been in the United Kingdom it was unjustifiably harsh to deprive him of the employment that he had maintained throughout. Whilst it was acknowledged that all his family were in Pakistan, the appellant had been working in the United Kingdom and had been allowed to stay here. He had contributed to the UK through his work. The consequence of returning a man of his age to Pakistan would be significant not only on himself but on his family. It was submitted that the appellant would find it difficult to find employment.
21. It was argued that depriving him of the opportunity of providing for his family was unjustifiable in the circumstances and that accordingly the judge had failed to carry out the proportionality balancing exercise correctly.
22. On behalf of the respondent was argued that taking account of the provisions of section 117B there was no error of law. The appellant had had no legitimate expectation that he would be able to remain in the United Kingdom and be able to continue in employment.
23. It was pointed out that the appellant had accepted that there had been a break in his legal status. He had not had legal status until it was granted in May 2013. Whilst it was accepted that the appellant had been in the United Kingdom for a significant period of time, the judge has properly considered all the factors and was entitled to come to the conclusions set out in the decision.
24. Reliance was placed upon the case of Rhuppiah 2018 UKSC 58 and the fact that the appellant's status had throughout been precarious. In accordance with section 117B the respondent's representative submitted that little weight should be given to a private life developed at a time when the appellant was in the United Kingdom and his status was precarious.

Consideration

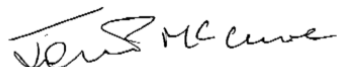
25. The appellant had entered the United Kingdom on the basis of a work permit. Whilst it had to be acknowledged that the appellant had continued working in the United Kingdom there was a break in his lawful status in the United Kingdom for the period January 2010 through to May 2013, when he was granted discretionary leave to remain in the United Kingdom. The appellant therefore could not rely on paragraph 276B.

26. It was not asserted that the appellant otherwise met the requirements of the rules. Reliance was being placed on the appellant's private life outside the rules.
27. The judge has carefully considered all the elements of the appellant's private life. The judge considered the appellant's work; the length of time that the appellant had been in the UK; his attendance and connections with the mosque.
28. The judge had properly considered all of the factors advanced on the appellant's behalf. In paragraph 32 the judge sums up those factors. The factors in the main related to the appellant's circumstances in the UK. The judge considered such and considered whether there were significant obstacles to the appellant's integration in Pakistan and conclude that there were no such obstacles.
29. Thereafter the judge was entitled having taken account of all those factors to come to the conclusion that whilst returning the appellant to Pakistan would inevitably cause some disruption, given all the circumstances that was outweighed by the factors considered including the public interest in the pursuit of effective immigration control. The appellant had no expectation that he would be allowed to remain in the UK indefinitely.
30. The appellant could not meet the requirements of the Immigration Rules. The judge has properly considered all the factors and made a proper assessment of proportionality and was entitled to come to the conclusions set out. Accordingly there is no error of law in the decision.

Notice of Decision

31. I dismiss the appeal on all grounds.

Signed



Deputy Upper Tribunal Judge McClure

Date 10th December