



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03114/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 May 2018

Decision & Reasons Promulgated
On 01 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

MISBAH UD-DIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A King, Rahman & Company Solicitors

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of Pakistan, entered the UK in November 2011 with a grant of entry clearance as a spouse. In due course he made an in-time application to vary his leave to remain as a spouse, which was granted, so that his leave expired on 31 January 2015. He then made an in-time application for indefinite leave to remain relying upon that marriage, which was refused on 3 November 2015. He duly lodged an appeal with the First-tier Tribunal requesting that his appeal be determined on the papers.

The appeal came before First-tier Tribunal Judge Paul at Taylor House and it was dismissed in a decision promulgated on 22 February 2018.

2. The Appellant applied for permission to appeal which was granted by Judge Pickup on 6 April 2018 on the ground that whilst it was not clear, it was arguable, (i) that the Appellant had not received all of the evidence relied upon by the Secretary of State, and, (ii) that the Judge had not had regard to all of the evidence submitted by the Appellant. Thus it was arguable that the Appellant had been denied a fair hearing of his appeal. Thus the matter comes before me.
3. The difficulty with the first challenge, as Miss King accepts, is that the Appellant's solicitors have not made any request of the Upper Tribunal pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules 2008, or the standard Directions issued upon grant of permission to appeal, for permission to rely upon any evidence in support of the appeal to the Upper Tribunal. Nor have they ever prepared any witness statement from any individual that would establish the complaint raised in the grounds to the effect that papers relied upon by the Respondent at the hearing of the appeal before the First-tier Tribunal had not been served upon either the Appellant, or, themselves. As a result the grounds raise only a bald assertion that this evidence was never served. In my judgement, and indeed as Ms King accepts, that disposes of the first complaint.
4. The second challenge raised in the grounds is that the decision discloses that the Judge failed to take account the documents that the Appellant had relied upon in support of the appeal, and had filed with the First-tier Tribunal, before the decision was made. The grounds assert that the Appellant's bundle and detailed written submissions were served upon the Respondent and filed with the Tribunal by fax on 16 October. A hard copy of those documents (it is not suggested that this differed in any way from the fax) was then provided in duplicate under cover of a letter dated 23 October 2017. The grounds assert that the Judge did not take them into account or make reference to them in the course of his decision. The difficulty with that submission, as Ms King was forced to concede, is that the Judge made specific reference to the material submitted to him under cover of a letter of 23 October 2017 [8]. Thus, there is no merit in this complaint as it is framed in the grounds.
5. The difficulty the Appellant faced in pursuing his appeal before the First-tier Tribunal was of course his tactical decision not to attend the hearing, coupled with his decision not to tender himself for cross-examination. Those decisions were curious given the nature of the decision he sought to appeal, and given the evidential burden that lay upon him in the event the Respondent made out the legal burden upon her. The Judge had enough material before him to reach the decision that he did in relation to the language test and he gave adequate, albeit very brief reasons, for the findings that he made; MD (Turkey) [2017] EWCA Civ 1958. The reader is able to see why the Appellant lost. The Judge was entitled to reach the conclusion that the Respondent had discharged the legal burden in relation to the deception, and was entitled to the conclusion that the Appellant had failed to discharge the evidential burden of satisfying him that there was some innocent explanation for what had occurred. Indeed it is difficult to see how the Appellant could have expected to do so having chosen to decline to attend the hearing, or offer oral evidence; MA (ETS - TOEIC)

testing) [2016] UKUT 450 [57]. As the Presidential panel pointed out there are a range of reasons why a person with some proficiency in English might engage in fraud over a test result, including lack of confidence in the testing process, contempt for the immigration system, fear of failure, and lack of time or commitment.

6. It follows that the grounds, as drafted and for which permission to appeal was given, do not establish that the Appellant was denied a fair hearing of his appeal through the procedural errors asserted. It is not open to the Appellant to seek now to widen those grounds to embrace other arguments. In any event there was in the light of the Judge's finding upon the central issue in the appeal an enhanced public interest in the Appellant's removal.

Notice of decision

The decision promulgated on 22 February 2018 did not involve the making of an error of law sufficient to require the decision to be set aside. The decision of the First tier Tribunal to dismiss the appeal is accordingly confirmed.

No anonymity direction is made. None is requested, and none was made below.

Signed

Date 23 May 2018

Deputy Upper Tribunal Judge J M Holmes