



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/25960/2016

THE IMMIGRATION ACTS

Heard at Liverpool Civil Justice Centre Decision & Reasons Promulgated
On 4 July 2018 On 10 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

WAJAHAT ALI

(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Dr Stull of A G Solicitors

For the Respondent: Mr C Bates Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 7 June 1990 and is a national of Pakistan.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 8 August which dismissed the Appellant's appeal against the decision of the Respondent dated 10 November 2016 to refuse the Appellants application for leave to remain on the basis of his family and private life.

The Judge's Decision

5. Grounds of appeal were lodged arguing that the Judge erred in dealing with the refusal that the Appellant had used deception in a previous application for leave and in his approach to the previous decision dated 2 December 2015 of First tier Tribunal Judge Heynes .
6. On 19 February 2018 First-tier Tribunal Judge Baker gave permission to appeal in respect of the first ground only finding no merit in the ground that the Judge had misapplied Devaseelan.
7. I heard submissions from Dr Stull on behalf of the Appellant that the Appellant had fully disclosed the previous finding of deception and he still maintained that he had not , in fact, used deception on that occasion and had to accept that he had not appealed that decision. The refusal letter referred to the use of deception in the current application when that was an error.
8. On behalf of the Respondent Mr Bates accepted that the refusal letter had erroneously relied on S-LTR.2.2 of the Immigration Rules that that is the use of deception in the current application and should rather have used S-LTR.1.6 which relied on previous conduct to demonstrate that the applicant's presence in the UK was not conducive to public good. However all parties were ware that the reason for the refusal was the Respondents view that the Appellants previous use of deception outweighed any Article 8 arguments that the Appellant had based on his wife and baby in the UK. He further argued that if at the time of the hearing the Appellant had accepted his previous dishonesty that may have been a relevant factor but he maintained the deception and therefore there was a continuing reliance on that previous dishonesty. The Judge was therefore entitled to conclude that his very poor immigration history outweighed his Article 8 claim.

Finding on Material Error

9. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
10. This appeal was an appeal against the refusal of a human rights claim, not of course an appeal against refusal under the Immigration Rules. Nevertheless the Judge was obliged to consider, as he did, whether the Appellant met the requirements of the Rules as otherwise removal would arguably be disproportionate under Article 8. This required him to consider as part of his overall assessment of proportionality the Appellants previous immigration history.
11. On 2 December 2015 a Judge had dismissed the Appellants appeal against a refusal of leave based on his use of deception in 2013 which led to the curtailment of his leave in 2014 finding that the decision to curtail his leave based on deception had not been appealed and therefore at the time of that appeal he did not meet the suitability requirements of Appendix FM. Judge Thorne accepted that there was no basis to go behind that decision and permission to challenge that aspect of his decision was refused.
12. Mr Bates quite properly conceded that the refusal letter under appeal referred to the wrong provision of the Suitability requirements in that it relied in S-LTR.2.2 which referred to the use of deception in the *current* application and should instead have referred to 1.6 which relied on previous conduct to demonstrate that the applicant's presence in the UK was not conducive to public good. I am satisfied however that this was a 'technical error' that made no material outcome of the decision because the Judge clearly recognised in paragraph 6 that the Appellants application for leave had been refused because he had previously obtained leave by deception when he submitted an ETS score obtained by deception and this resulted in him failing to meet the suitability requirements of Appendix FM. This aspect of his history was inevitably going to be a matter which the Judge was entitled to take into account in paragraph 90 in his overall assessment under Article 8 and as a factor that was relevant in the proportionality balance based on section 117B of the Nationality Immigration and Asylum Act 2002.

13. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning. I find that the Appellant cannot be in any doubt about why the appeal was refused in that the Judge concluded that given his immigration history which included the use of deception the public interest in maintaining the integrity of the system outweighed his Article 8 rights.

CONCLUSION

14. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

15. **The appeal is dismissed.**

Signed

Date 6.7.2018

Deputy Upper Tribunal Judge Birrell