



**Upper Tribunal**

**(Immigration and Asylum Chamber**  
IA/08420/2015

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House**  
**On 5<sup>th</sup> October 2018**

**Decision and Reasons Promulgated**  
**On 15<sup>th</sup> October 2018**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**Afzal Iqbal**

**(Anonymity Direction Not Made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance.

For the Respondent: Mr T Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a Pakistan national born on 14<sup>th</sup> August 1990, was granted permission to appeal a determination of First-tier Tribunal Judge M A Khan, which dismissed the appellant's appeal, on human rights grounds, against a decision of the Secretary of State dated 11<sup>th</sup> February 2015 (served on 13<sup>th</sup>

February 2015) to refuse to vary leave to remain on the basis of the appellant's private life.

2. The Secretary of State's decision considered the application for variation of leave dated 29<sup>th</sup> October 2014. It noted the applicant had applied on the basis of his private life for leave to remain. He had requested 3 months leave to remain outside the rules to enable him to gather documents to make a further student application. The decision applied paragraph 276ADE, considered there were no very significant obstacles to his return to Pakistan following his entry to the UK on 11<sup>th</sup> January 2011. He had the option of leaving the UK and making a new application for entry clearance from abroad. It was considered there was no provision within the rules for this application and there were no exceptional circumstances. He retained social cultural and linguistic links with Pakistan.
3. The First-tier Tribunal Judge considered the matter on the papers as requested by the appellant and promulgated a decision on 25<sup>th</sup> February 2016. He noted it was for the appellant to establish he met the requirements of the Rules and that the decision was in breach of his human rights. The judge recorded the following
  - (i) the appellant arrived on a student visa in 2011.
  - (ii) the appellant made an application for leave to remain in the UK under Article 8 of the ECHR to extend his leave in order to make a further application as a student. He asserted he was waiting for some documents to make his student application and he asserted, in his appeal, that the Secretary of State had not considered his time spent in the UK.
  - (iii) The judge set out the respondent's reasons for refusal (cited at [2] above)- there were no exceptional circumstances.
  - (iv) His leave expired on 31st October 2014.

The judge found

- (i) the appellant's private life consisted of his studies. On the evidence the appellant could return to Pakistan and make a fresh application from there [23].
- (ii) he had only been absent from Pakistan for 3 years (there was no asylum claim). His private life could continue in Pakistan.
- (iii) there were no exceptional circumstances and the decision of refusal was proportionate. His leave was precarious, and he had always been aware of the same. The judge applied **Razgar**

and Section 117 of the Nationality, Immigration and Asylum Act 2002.

### **Application for Permission to Appeal**

4. The application for permission made stated the decision was not in accordance with the law, the applicant had established a private life, he was awaiting documentation and in the interests of justice the appeal should be allowed.
5. Permission to appeal was granted by UTJ Coker on 1<sup>st</sup> August 2018 in these terms:

*'the grounds seeking permission to appeal do not assist. They do not identify an arguable error of law but refer to the respondent's decision being wrong.*

*Nevertheless, it is arguable that the First-tier Tribunal judge failed to identify the nature of the decision the subject of appeal and thus fail to apply the correct assessment of proportionality. I grant permission'.*

Judge Coker gave directions that both parties should file documentation relied on.

### **The Hearing**

6. At the hearing, Mr Melvin submitted that the decision disclosed no error of law.

### **Conclusions**

7. Both parties complied with the direction to serve further documentation. The appellant failed to attend the hearing, but I was satisfied that he had been given the date, time and venue of the hearing; indeed, the appellant submitted documentation for consideration on the 2<sup>nd</sup> October 2018 and requested that the matter be dealt with on the papers. I considered that it was in the interests of justice to proceed. I can only consider documentation that was before the First-tier Tribunal when considering whether the judge made an error of law.
8. The judge did engage with the correct decision that is of 11<sup>th</sup> February 2015. The appellant applied outside the Immigration Rules for three months leave to gather documentation. Although the First-tier Tribunal judge at one point in the decision made reference to an application for indefinite leave to remain, it is clear on careful reading that the judge realised that the application was to remain for only three months. That application was made on 29<sup>th</sup> October 2014 and refused in February 2015. This was beyond the three months requested

by the applicant to gather documentation. The matter was not determined by the First-tier Tribunal until 25<sup>th</sup> February 2016. (There was no explanation why this has taken over 2 years to come before the Upper Tribunal).

9. That said although the judge concluded there was no interference with the appellant's private life he went on to consider the matter on the basis of proportionality of the decision and, as he was obliged to do, considered the application under Article 8 via the lens of the immigration rules. He also applied Section 117B of the Nationality, Immigration and Asylum Act 2002 which he is obliged to do when considering the balancing exercise in relation to proportionality.
10. The real target of complaint is the decision of the Secretary of State refusing his application. No error of law, as Judge Coker stated, was identified by the grounds. The judge considered the relevant material and undertook a balancing exercise with reference to Article 8. Nothing was submitted, and the appellant did not attend to demonstrate why there were very significant obstacles to his return to Pakistan and make a further application for entry clearance. The judge considered Article 8 and gave a succinct judgment on the key elements.

As set out in **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)**

*'Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge'.*

The grounds are essentially a disagreement with the decision of the First-tier Tribunal which discloses no material error of law and shall stand. The appeal is dismissed.

Signed Helen Rimington  
October 2018

Date 8<sup>th</sup>

Upper Tribunal Judge Rimington