



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02672/2017

THE IMMIGRATION ACTS

Heard at Bradford
On 2 July 2018

Decision & Reasons Promulgated
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

MUHAMMAD SAEED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Stanway, instructed by Reiss Solicitors

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Muhammad Saeed, was born on 6 June 1971 and is a male citizen of Pakistan. By a decision dated 6 March 2017, the Secretary of State refused the appellant international protection. He appealed to the First-tier Tribunal (Judge E B Grant) which, in a decision promulgated on 18 May 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Both parties accepted before the First-tier Tribunal Judge [26] that the appellant could not succeed on Refugee Convention grounds; the appeal was limited to Article 8 and Article 3 ECHR grounds only.
3. The judge found the appellant to be an incredible witness and dismissed the Article 3 appeal. The appellant suffers from mental health issues for which there was evidence before the Tribunal. Judge Grant [33] considered the medical evidence relating to the appellant's anxiety and depression but concluded that "from the background material placed before the Tribunal ... anti-depressants are available in Pakistan". The judge went on [34–36] to consider the Article 8 appeal and to dismiss it. The judge acknowledged that the appellant had established a private life in the United Kingdom during residence here of 12 years. He had established a private life with close links with the Pakistani community in the mosques which he attends. He has an elderly uncle and other family members living in Bradford but he is estranged from them. The judge accepted that the appellant's removal would cause an interference with his right to respect for a private life. However, she found that the appellant's removal would be proportionate. She refers at [36] to Section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended). She noted that the appellant had developed his private life at a time when his status here was precarious. The appellant cannot speak English and he has worked illegally in the United Kingdom rather than returning to Pakistan when his leave expired. She found that the appellant's removal engaged the public interest of enforcing effective immigration control.
4. The grounds, although rather lengthy, are confused and difficult to follow. Granting permission, Designated Tribunal Judge Murray found that the judge had arguably erred in law by failing to consider paragraph 276ADE(1)(vi):

'(vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.'
5. Judge Murray considered that any findings under paragraph 276 should have formed the basis for the proportionality assessment. The grounds of appeal make no reference at all to paragraph 276ADE. I refer to the recent Upper Tribunal decision *in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 00245 (IAC)*. The headnote [3] reads:

“(3) Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:

 - (a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:
 - (i) for the original appellant; or
 - (ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international Treaty obligations; or ...”

6. AZ was reported after the hearing of the instant appeal. Had I been aware of the decision, I should have invited submissions but the it is likely that I should have prevented the appellant relying on a ground of appeal which had not been pleased. However, although I did hear submissions, the outcome of the appeal would have been no different.
7. Mr Stanway, who appeared for the appellant, said that the failure of the judge to address paragraph 276ADE was an error. Had she addressed the paragraph, the appeal could have reached a different outcome. The appellant has no money, no job and he has mental health issues, all of which arguably affect his ability to reintegrate into Pakistani society.
8. Whilst it would have been better had the judge considered paragraph 276ADE before proceeding to dismiss the appeal on Article 8 grounds, I do not consider any error of law she may have perpetrated to be fatal to her decision. I accept Mrs Pettersen's submission that there is nothing to suggest that the judge has not considered all the relevant circumstances of the appellant in reaching her decision on Article 8. The ability of the appellant to reintegrate into Pakistan society would have been a factor which the judge was bound to consider under Article 8 and, although she makes no specific reference to reintegration, she has had regard to the length of residence which the appellant has spent in the United Kingdom and has also considered his mental health issues. In relation to that latter point, she has made a finding (not challenged) that the anti-depressants which the appellant currently takes are available in Pakistan. The fact that the appellant has no money and no job does not appear to have been raised by Counsel representing the appellant at the First-tier Tribunal. In any event, given the strong public interest which the judge has identified, I do not consider it likely at all that the judge would have reached a different outcome had she considered the appellant's financial circumstances and employment prospects specifically in her analysis. As I have said, I am satisfied that she has considered all relevant circumstances. I conclude, therefore, that, even if the judge has erred in law by failing to consider paragraph 276ADE, I exercise my discretion by refraining from setting aside her decision.

Notice of Decision

9. This appeal is dismissed.
10. No anonymity direction is made.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane