



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/06307/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16<sup>th</sup> March 2018**

**Decision & Reasons  
Promulgated  
On 09<sup>th</sup> April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR MOWIZ NOOR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Jones, Counsel

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan born on 20<sup>th</sup> December 1990. The Appellant claims to have arrived in the UK in December 2010. On 21<sup>st</sup> December 2016 he was served with notice as an overstayer, claimed asylum and attended his screening interview. His claim for asylum was based on a purported well-founded fear of persecution in Pakistan on the basis of his imputed political opinion. He also brought claims pursuant to the European Convention of Human Rights. His application was refused by Notice of Refusal dated 21<sup>st</sup> June 2017. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Aziz sitting at

Birmingham on 31<sup>st</sup> July 2017. In a decision and reasons promulgated on 25<sup>th</sup> August 2017 the Appellant's appeal was dismissed on all grounds.

2. On 14<sup>th</sup> August 2017 Grounds of Appeal were lodged to the Upper Tribunal. Those Grounds of Appeal referred to the fact that whilst the judge was not obliged to accept that there was Article 8 family life he was obliged to give consideration to the finding that there was not one that was adequate in all the circumstances. The judge had found that the couple had married and that they were in a relationship although he doubted how durable this relationship was and he had not found it to be a sham.
3. On 30<sup>th</sup> October 2017 First-tier Tribunal Judge Mark Davies refused permission to appeal pointing out that the grounds totally ignored the judge's findings that he did not find the Appellant to be a credible and reliable witness and Judge Davies considered that the judge had made clear and cogent findings regarding the Appellant's claimed family life. Renewed Grounds of Appeal were lodged to the Upper Tribunal on 15<sup>th</sup> November 2017.
4. On 18<sup>th</sup> December 2017 Judge of the Upper Tribunal Grubb granted permission to appeal. Judge Grubb noticed that the ground did not challenge the dismissal of the international protection claim but focused on the judge's finding that the Appellant and his wife (through a religious marriage) did not have "family life" for the purpose of Article 8. Judge Grubb considered that it was arguable that given the judge's findings that the relationship was genuine, that they were married but did not cohabit (potentially for an explicable reason), and that it was arguably irrational to find that they did not enjoy family life. Further he considered that that the judge had made no finding on Article 8.2 and so it was unclear what view he would have taken and whether Article 8 will be breached if he had found family life did exist. In those circumstances he was not confident that any error would not be material to his dismissal of the Article 8 claim and consequently granted permission in respect of the Article 8 decision alone.
5. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel Ms Jones. The Respondent appears by her instructed Home Office Presenting Officer Mr Tarlow.
6. I am considerably assisted in this matter by the approach adopted by Mr Tarlow. He advises that he has given due and proper consideration to the Grounds of Appeal and the decision of the First-tier Tribunal Judge and he is of the view that the judge has failed to give proper and due consideration to the issues relating to Article 8 or to give findings and reasons. He consequently invites me to find that there is a material error of law and to remit the matter back to the First-tier Tribunal for rehearing solely on the aspect relating to the Article 8 appeal.
7. Ms Jones indicates that she is agreeable to such a course of action.

## **The Law**

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings on Error of Law**

10. The matter is quite properly addressed by Upper Tribunal Judge Grubb in his grant of permission. This is a judge who unfortunately failed to make findings on Article 8(2) and consequently it is unclear what view he would have taken on whether Article 8 would be breached if he had found family life did exist. The judge has failed to give due, full and proper consideration to Article 8 and that is a matter that constitutes a material error of law. That is conceded by Mr Tarlow.
11. In such circumstances the correct approach is to find a material error of law, to set aside the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier Tribunal for rehearing.

## **Decision and Reasons**

12. On finding that there is a material error of law in the decision of the First-tier Tribunal Judge the decision is set aside and the matter is remitted back to the First-tier Tribunal for rehearing. The following directions are to apply:

- (1) That the appeal is remitted to the First-tier Tribunal to be reheard solely relating to the Appellant's appeal pursuant to Article 8 of the European Convention of Human Rights. So far as those grounds are concerned no findings of fact are preserved.
- (2) That the appeal be remitted to be heard at Taylor House on the first available date 28 days hence with an ELH of two hours. The hearing is to be before any First-tier Tribunal Judge other than Immigration Judge Aziz.
- (3) That there be leave to either party to file and serve a bundle of such further subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (4) That an Urdu interpreter do attend the restored hearing.

No anonymity direction is made.

Signed

Date 6 April 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 6 April 2018

Deputy Upper Tribunal Judge D N Harris