Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00674/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 26th July 2019	**On 05th August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ASIF HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss G Patel, Counsel, instructed by Ashwood Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge A R Hudson (the judge) of the First-tier Tribunal (the FtT) promulgated on 18th March 2019.

2. The Appellant, born 8th June 1993, is a citizen of Pakistan. He entered the UK as a child visitor on 20th June 2007. He remained in the UK when his leave expired. On 7th February 2017 he was served with a liability for

removal notice and on 19th July 2017 applied for leave to remain which was deemed to be a human rights claim.

3. The application was refused on 24th December 2018 and the Appellant appealed to the FtT.

4. The appeal was heard on 7th March 2019. The Appellant who was 25 years of age at the date of hearing gave evidence as did his adult sister with whom he has lived since his arrival in the UK.

5. The judge noted that the Appellant lives with his sister and brother-in-law and their five children. The judge found that the Appellant could not satisfy paragraph 276ADE(1)(vi) of the Immigration Rules, as he had not proved that there would be very significant obstacles to his integration in Pakistan. The judge found that the Appellant has family members in Pakistan, including four older siblings and his parents.

6. The judge considered Article 8 of the 1950 European Convention outside the Immigration Rules, concluding that Article 8 was engaged, but the Appellant's removal from the UK would be proportionate.

7. The appeal was dismissed.

Application for Permission to Appeal

8. The grounds seeking permission are lengthy, running to 30 paragraphs set out over eight pages, and exceed the length of the judge's decision.

9. In brief summary it was submitted that the judge had erred in law by failing to consider material matters/material evidence, failed to properly consider the Article 8 claim and case law, and failed to properly apply case law regarding paragraph 276ADE(1)(vi) concerning significant obstacles and integration. The judge found at paragraph 13 that the Appellant has lived with his sister and brother-in-law and their five children, and has effectively been raised as the older brother to the children since he was 14. The judge found that the children (who at the time were aged between 20 and 12)

> "love him dearly and would miss him if he returned to Pakistan, however, on the evidence before me there is nothing exceptional about the relationship between them and their adult brother. They are not dependent upon him financially or emotionally and he is not dependent upon them".

It was submitted that the judge had erred in law by making reference to exceptionality rather than assessing proportionality.

10. It was contended that the judge had failed to conduct a balancing exercise when considering the Appellant's case under Article 8. The Appellant had resided with his family members in the UK since his arrival in the UK which was a significant period of time and had not lived independently from them.

11. It was submitted that the judge had erred at paragraph 16 in relying upon the Court of Appeal decision in Rhuppiah [2016] EWCA Civ 803, as that case had been replaced by the Supreme Court decision in Rhuppiah [2018] UKSC 58. The Supreme Court found that financial independence with reference to section 117B(3) of the Nationality, Immigration and Asylum Act 2002 meant an absence of financial dependence upon the state. The judge was therefore wrong to find that the Appellant was not financially independent.

12. It was submitted that the judge erred when considering very significant obstacles with reference to paragraph 276ADE(1)(vi) by failing to apply case law, Parveen [2018] EWCA Civ 932 and Kamara [2016] EWCA Civ 813.

The Grant of Permission to Appeal

13. Initially permission to appeal was refused by Judge Scott-Baker of the FtT, but subsequently granted by Deputy Upper Tribunal Judge Mailer in the following terms;

> "1. The Appellant is a national of Pakistan born on 8th June 1993. He seeks permission to appeal the decision of the First-tier Tribunal Judge who dismissed his appeal against the Respondent's decision to refuse to grant him leave to remain on human rights grounds. He arrived in the UK as a 14 year old on a family visit. When his mother and brother returned to Pakistan, he was left with his sister's family. He has lived in the UK for close to twelve years. He has effectively been raised as the elder brother of his sister's five children, ranging in age from 20 to 12 years. He continues to live with them.
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> 2. Although the grounds are not always coherent, it is arguable that the Appellant had established family life with his sister and her family, the significance of which was not properly assessed by the judge. It is also arguable that she should have applied the decision of the Supreme Court in Rhuppiah [2018] UKSC 58 which was in existence at the time, rather than the test adopted by the Court of Appeal [2016] EWCA Civ 803.
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> 3. Permission to appeal is granted".

14. Directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it must be set aside.

My Analysis and Conclusions

15. At the oral hearing Mr Bates conceded that the judge had erred in considering Rhuppiah, but contended this was not a material error.

16. Miss Patel relied and expanded upon the grounds contained within the application for permission to appeal.

17. I find no material error of law for the following reasons.

18. The judge adopted the correct approach in law when considering this appeal. This is demonstrated at paragraph 16 in which the judge explains that the human rights claim must be considered through the prism of the Immigration Rules.

19. It was not suggested that the Appellant could satisfy Appendix FM in relation to family life. The judge considered paragraph 276ADE(1)(vi). The judge refers to Treebhawon [2017] UKUT 13 and it is contended was wrong to do so.

20. In my view that is not the case. The grounds refer to Parveen in which Underhill LJ commented upon the finding in Treebhawon that "mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied are unlikely to satisfy the test of very significant obstacles in paragraph 276ADE". Underhill LJ stated

> "I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by mere inconvenience or upheaval. But I am not sure that saying that mere hardship or difficulty or hurdles, even if multiplied, will not generally suffice adds anything of substance".

21. It is clear from the guidance given by Underhill LJ that very significant obstacles connotes an elevated threshold. It is not a case of whether it would be reasonable for the Appellant to integrate in Pakistan.

22. The judge did not refer to Kamara, but in my view followed the principles set out in that decision. At paragraph 14 of Kamara it is explained that there must be a broad evaluative judgment. It must be considered whether an individual is enough of an insider in terms of understanding how life in the society in the country of return is carried on. The individual must have the capacity to participate in life in that country and have a reasonable opportunity to be accepted there and operate on a day-to-day basis. The individual must be able to build up with a reasonable time a variety of human relationships to give substance to their private or family life.

23. The judge took into account at paragraph 17 that the Appellant lived in Pakistan for his formative years prior to arrival in the UK. He has a full understanding of the infrastructure. The Appellant is well educated and in good health and has the support of a wealth of friends and relatives in Pakistan. He speaks both Urdu and English and will have considerable advantages in the labour market having the benefit of a full education from the UK including a BTEC diploma in IT.

24. The judge took into account that an inability to read or write in Urdu may make some occupations unavailable to the Appellant but an ability to read, write and speak English would place him at an advantage over many peers.

25. The judge found that the Appellant would be able to work in Pakistan. There is no error of law disclosed in the consideration by the judge of the test of very significant obstacles. The judge was entitled to conclude that the Appellant had not satisfied the burden of proof.

26. Having found that the Appellant could not satisfy the Immigration Rules the judge correctly went on to consider Article 8 outside the Immigration Rules. The test to be applied is whether there are exceptional circumstances that would lead to unjustifiably harsh consequences. I do not find that the judge failed to consider any material evidence. The judge took into account the best interests of the two minor children with whom the Appellant lived. At paragraph 18 the judge finds that the best interests of a child must be a primary consideration. The judge found that the best interests of the children would be to remain in the care of their parents. There is no error of law disclosed on this issue.

27. The judge found that the Appellant had lived with family members since arriving in the UK. The judge was entitled to take into account when considering the public interest, that the Appellant had overstayed his visa although the judge did not blame him for that while he was a minor.

28. The judge erred in considering section 117B(3) which confirms that it is in the public interest that a person seeking to remain is financially independent. The judge should have applied the Supreme Court decision in Rhuppiah which was in force at the date of the FtT decision. The Appellant was not financially dependent upon the state and therefore should have been regarded as financially independent, but the judge was quite correct to point out that he is reliant upon his family members in the UK for accommodation and all basic necessities. Financial independence is not a positive consideration in section 117B, but is a neutral factor to be taken into account in the balancing exercise. The judge's error was therefore not material and did not infect other findings.

29. The judge at paragraph 16 found that the Appellant had established his private and family life while his immigration status was precarious. The Appellant's immigration status was not in fact precarious, as precarious means that he would have had limited leave. The Appellant has established his family and private life while he has remained in the UK without any leave. The judge has taken into account family and private life established by the Appellant, but also taken into account the public interest as she was bound to do. The only error relates to the application of Rhuppiah, and as previously stated I do not find that to be a material error. Had the judge considered the Supreme Court decision in Rhuppiah, it would not have altered the decision that was made.

Notice of Decision

The decision of the FtT does not disclose a material error of law. The appeal is dismissed.

There has been no application for anonymity and I see no need to make an anonymity direction.

Signed Date 27th July 2019

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed. There is no fee award.

Signed Date 27th July 2019

Deputy Upper Tribunal Judge M A Hall