



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: HU/12177/2018  
HU/07956/2018  
HU/12179/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 April 2019**

**Decision & Reasons Promulgated  
On 1 May 2019**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**AHSAN [H]**

**SARAH [K]**

**[Z A]**

**Appellants**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr. M. Aslam of counsel, instructed by Burnley Legal Solicitors

For the Respondent: Ms B. Jones, Home Office Presenting Officer

**DECISION AND REASONS**

## **BACKGROUND TO THE APPEAL**

1. The Appellants are nationals of Pakistan and the 2<sup>nd</sup> and 3<sup>rd</sup> Appellants are dependent on applications made by the 1<sup>st</sup> Appellant. The 1<sup>st</sup> Appellant entered the United Kingdom, as student on 7 September 2008 and he was subsequently granted further leave to remain as a Tier 1 Highly Skilled (General) Migrant. On 9 June 2017 he applied for indefinite leave to remain as a Tier 1 Highly Skilled (General) Migrant and he then varied this application to one for indefinite leave to remain on the basis of long residency.
2. His application was refused on 20 February 2018 and he appealed. In letters, dated 29 March and 1 June 2018, the Appellants' solicitors confirmed that the basis of the appeal was an assertion that the decision breached his family and private life rights for the purposes of Article 8 of the European Convention on Human Rights and that any interference with these rights could be disproportionate. The appeal was dismissed by First-tier Tribunal Judge Dineen in a decision promulgated on 21 January 2019. The Appellants appealed against this decision and permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Grimmett.

## **ERROR OF LAW HEARING**

3. Counsel for the Appellant said that he was relying on the grounds for seeking permission to appeal and, in particular, the submission that First-tier Tribunal Judge Dineen had failed to make adequate findings on the evidence provided by HMRC. The Home Office Presenting Officer submitted that the grounds were no more than a disagreement with the findings made by the judge and did not disclose any material errors of law. I have referred to the details of their submissions, where appropriate, in my findings below.

## **ERROR OF LAW DECISION**

4. First-tier Tribunal Judge Grimmett did not give the Appellants permission to appeal in relation to paragraphs 12 to 17 of the grounds of appeal. Instead, he granted permission to appeal on the basis that First-tier Tribunal Judge Dineen had "erred in relying on the evidence of a witness statement from an employee of HMRC of 2012, which said that Pattison Enterprises had not participated in legitimate trade, without further explanation when there was also evidence from HMRC confirming that [the] company had employed the appellant".

5. The Appellants had accepted that the 1<sup>st</sup> Appellant was not entitled to indefinite leave to remain on the basis of long residence. Therefore, the appeal before First-tier Tribunal Judge Dineen proceeded on the basis that they were entitled to leave to remain on human rights grounds outside the Immigration Rules.
6. In paragraph 9 of his decision, First-tier Tribunal Judge Dineen found that it was clear that, if the Appellants were removed from the UK, there would be interference with the particular form of family life which they were pursuing in the UK. However, he omitted to make any findings in relation to any private life which they may enjoy in the United Kingdom, despite the length of time they had been here and the employment undertaken by the 2<sup>nd</sup> Appellant.
7. In paragraph 10 the Judge went on to consider the question of proportionality for the purposes of Article 8(2) of the European Convention on Human Rights. In paragraph 20 of his decision, he also reminded himself of the need to take into account the contents of section 117B of the Nationality, Immigration and Asylum Act 2002. When doing so, it was necessary for First-tier Tribunal Judge Dineen to give weight to the fact that the maintenance of effective immigration controls is in the public interest. Therefore, the question of whether the 1<sup>st</sup> Appellant had relied on false information when previously applying for leave to remain as a Tier 1 Highly Skilled (General) Migrant on 29 March 2011 was a crucial part of the proportionality assessment.
8. In order to qualify for leave in this category, the 1<sup>st</sup> Appellant would have had to establish that he had earned above the necessary threshold in a specified period of time before making his application. When seeking to establish that the 1<sup>st</sup> Appellant falsified evidence in order to meet the necessary criteria, the Respondent relied in part on a witness statement from an HEO employed by HMRC, dated 11 December 2012.
9. First-tier Tribunal Judge Dineen referred to this witness statement in paragraph 11 of his decision but did not reach any detailed findings and, in particular, did not consider whether this statement was capable of confirming that the 1<sup>st</sup> Appellant had not been employed by Pattison Enterprises between 1 March 2010 and 28 February 2011; purported employment which came to an end a year and nine months before the date of the witness statement.

10. As submitted by the Home Office Presenting Officer, First-tier Tribunal Judge Dineen did not only rely on the witness statement from HMRC. He also relied on the contents of the 1<sup>st</sup> Appellant's witness statement and interview. However, when doing so, he placed reliance on the absence of other evidence, such as a contract of employment. However, there was a letter from Pattison Enterprises, confirming his employment and a copy of this firm's Employee Pay Details for the 1<sup>st</sup> Appellant and confirmation from HMRC that he had made a tax return which reflected the recorded earnings. First-tier Tribunal Judge Dineen failed to make any clear findings in relation to this evidence preferring instead to speculate about the manner in which the Appellant had been paid and the consistency of the money he was paid each month.
11. In addition, some of the inconsistencies said to have arisen in the 1<sup>st</sup> Appellant's evidence were not borne out and the Judge failed to take into account other aspects of the 1<sup>st</sup> Appellant's immigration history which reflected positively on the credibility of his account.
12. The Home Office Presenting Officer relied on the contents of paragraphs 19 to 21 of First-Tier Tribunal Judge Dineen's decision but this did not represent a sufficiently thorough and cogent analysis of the evidence to make his proportionality assessment sustainable.
13. For all of these reasons, I find that there were errors of law in First-tier Tribunal Judge Dineen's decision.

## **DECISION**

- (1) The Appellant's appeal is allowed.
- (2) The appeal is remitted to the First-tier Tribunal to be heard *de novo* by a First-tier Tribunal Judge other than First-tier Tribunal Judge Gullick, Gumsley, Grimmett or Mill.

**Nadine Finch**

Signed  
Upper Tribunal Judge Finch

Date 26 April 2019