



Upper Tribunal

**(Immigration and Asylum Chamber)
HU/06569/2019 (P)**

Appeal Number:

THE IMMIGRATION ACTS

Decided under rule 34 (P)

**Decision & Reasons
Promulgated**

On 29 July 2020

On 6 August 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

IQBAL KABIR

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation (by way of written submissions)

**For the appellant: Mr R Sharma of Counsel instructed by Shah
Jahal Solicitors**

**For the respondent: Mr P Deller, Senior Home Office Presenting
Officer**

Background

1. This appeal comes before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Martin sitting as a First-tier Tribunal Judge on 3 March 2020 against the determination of First-tier Tribunal Judge Talbot, promulgated on 28 October 2019 following a hearing at Hendon Magistrates Court on 7 October 2019.
2. The appellant is a Bangladeshi national born on 9 October 1980. He appeals on human rights grounds against the refusal of the respondent to grant his application for indefinite leave to remain made on the basis of long residence.
3. The judge considered what he saw as a crucial issue: the validity of the application under the rules and whether it was also a human rights application (at 10). He found that the application could only be considered on a human rights basis, that the 276B application was invalid and he went on to dismiss the appeal having found that the decision to interfere in the appellant's private life was a proportionate response.
4. The grounds for permission argue that the judge was wrong to find that the application was invalid, that he failed to consider the Home Office guidance on the making of applications and that he should have made a finding on the allegation of deception. Permission was granted on all grounds.

Covid-19 crisis: preliminary matters

5. The matter was due to be listed for a hearing at Field House but due to the Covid-19 pandemic and the need to take precautions against its spread, this did not happen and directions were sent to the parties on 18 May 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.
6. The Tribunal has received written submissions from both parties. I now consider the matter.
7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing

with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

8. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. The respondent has not raised any objection to the matter being considered on the papers. The appellant's submissions appear to agree to the error of law matter being determined without a hearing provided that it is decided in the appellant's favour. Both sides express the view that an oral (remote) hearing would be necessary for any re-making of the decision.
9. A full account of the facts are set out in those papers and that the issue to be decided is straightforward. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellant and consider that a speedy determination of this matter is in his best interests. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

Submissions

10. The appellant's submissions are dated 21 May 2020. The respondent replied on 17 June 2020, having obtained an extension of time. To date there do not appear to have been any further submissions from the appellant.
11. The appellant argues in his submissions that the judge was wrong to suggest that an application under paragraph 276B was distinct from a human rights claim. It is pointed out that the Home Office guidance on rights of appeal confirms that certain applications, including those under 276B, are to be treated as human rights claims. It is submitted that the judge was in error to consider the human rights claim to be mutually exclusive from an application under the said paragraph. This was relevant because the rules were a starting point for the consideration of article 8 and the issue of whether the appellant satisfied an immigration rule would, therefore, be the starting point for the consideration of his human rights

claim. The judge had erred by failing to consider whether the decision reached on the 10 year claim was correct.

12. It is also argued that the judge erred in failing to resolve the issue of deception. The submissions conclude by maintaining that unless the respondent accepted that there were material errors requiring the determination to be set aside, the issues in this appeal were inappropriate for a paper decision. It is submitted that a further hearing would be necessary were the decision to be set aside.
13. Mr Deller's submissions rightly and fairly concede that the judge's determination contains errors of law such that it cannot stand. There is agreement with Counsel's submissions that the judge had erred by conflating the questions of whether a valid application had been made and whether a human rights claim had been made. The judge's approach to the assessment of article 8 is also accepted as erroneous, given his decision to exclude any consideration of the relevance of eligibility under paragraph 276B. It is pointed out that the allegations of deception are relevant to the consideration as a whole. Mr Deller agrees that some form of a substantive continuance hearing would be required.

Discussion and conclusions

14. I have considered all the evidence, the grounds for permission and the submissions made by both parties. I am satisfied that for the following reasons the judge's determination contains errors of law and that his decision is unsustainable.
15. It is plain and the parties agree that the judge was wrong to have found that the paragraph 276B application was invalid and that it and an article 8 claim were mutually exclusive. The respondent's guidance on rights of appeal, to which the judge referred, confirm that a 276B application is to be treated as a human rights claim. It was therefore incumbent upon the judge to consider whether the appellant met the requirements of an immigration rule when commencing his assessment of the human rights claim. This did not happen here.
16. Given that the judge should have considered the rules, he would also have been required to consider the allegation of deception which indeed is relevant to the assessment of the claim as a whole. This matter was not resolved and needs to be considered.
17. This is an appeal where the appellant has not had a fair hearing of all the relevant issues and for that reason I set aside the determination in its entirety and remit it back to the

First-tier Tribunal for a fresh hearing and for a decision to be made on all issues. Directions will be issued by the First-tier Tribunal in due course.

Decision

18. The decision of the First-tier Tribunal is set aside and shall be re-made on all issues by another judge of the First-tier Tribunal.

Anonymity

19. There has been no request for an anonymity order at any stage and I see no reason to make one.

Signed

R. Kekić

Upper Tribunal Judge

Date: 29 July 2020