



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000986
First-tier Tribunal No:
PA/52245/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 June 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

AHMED NAWAZ
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Maqsood, Counsel, instructed by Archbold Solicitors
For the Respondent: Mr A Basra, Senior Presenting Officer

Heard at Field House on 12 June 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of Judge of the First-tier Tribunal Colvin ('the Judge'), sent to the parties on 1 February 2023, by which his appeal against the decision of the respondent to refuse him leave to remain on human rights (article 8 ECHR) grounds was dismissed.
2. The appellant appeals with permission from Upper Tribunal Judge Stephen Smith.

Brief Facts

3. The appellant is a national of Pakistan and presently aged 41. He entered the United Kingdom as a visitor in May 2010 and subsequently overstayed. He applied for leave to remain outside of the Immigration Rules in October 2012, but the application was rejected by the respondent.
4. He was encountered working illegally in September 2017 and claimed asylum. He then absconded and on 7 March 2018 his claim was considered by the respondent to have been withdrawn.
5. He later made a human rights (article 8) application asserting that he is in a relationship with his Pakistani national partner and their three children, the eldest of whom is a British citizen. The respondent refused the application by a decision dated 26 April 2021. A supplementary decision was issued on 18 November 2022.
6. The appellant exercised his right of appeal. At a CMR hearing held on 25 November 2022, the appellant withdrew his asylum and human protection appeals.
7. The appeal came before the Judge sitting at Taylor House on 24 January 2023. The appellant attended, but his wife did not.
8. Relevant to this appeal, the Judge held:

‘22. On the basis of this evidence alone I am satisfied on a balance of probabilities that the appellant and Iqra Ayoub have been husband and wife for many years longer than is now claimed and were certainly married albeit without children at the time of the Screening Interview in July 2017. It is in these circumstances that I assess the rest of the evidence before me.

23. I consider that the evidence overall considered in the round strongly suggests that the appellant and his wife, Iqra Ayoub, have had an arrangement that they would (at least up to now) pursue separate immigration claims as a way of camouflaging their relationship and thereby misleading the Home Office as to their real circumstances. Whilst it is not known on the evidence before me when Ms. Ayoub entered the UK, it is known that the appellant overstayed since about the end of 2010 and any claims made thereafter including the asylum claim were made solely in his name. In particular, as noted by the respondent in the supplementary refusal letter, further submissions made on his behalf in November and December 2019 and the subsequent judicial review proceedings made no mention of being married or having children. I find that no satisfactory explanation for this omission has been given and this evidence supports the suggestion that he deliberately omitted these matters from the Home Office for the reason I have suggested above.

...

30. However, for the somewhat different reasons given above, I find that I am unable to reach a decision that Article 8 family life is engaged. As stated above, the evidence points to the appellant and Ms. Ayoub being married before the birth of any of the children but they failed to disclose this fact to the Home Office in their separate applications. This is a significant omission that is highly relevant as to whether there is family life between them and the children now. I therefore consider that it is incumbent upon the Home Office – either after considering the reasons given in this appeal Decision and/or upon consideration of Ms. Ayoub’s outstanding application for leave to remain – to make further enquiries of both parties in an attempt to ascertain the true circumstances of their relationship and the births of the three children.’

Grounds of Appeal

9. In granting permission to appeal on 6 May 2023, Upper Tribunal Judge Stephen Smith reasoned:

- ‘1. The appellant is a litigant in person. The grounds of appeal as drafted are primarily a series of disagreements of fact and weight, along with a restatement of his case. However, I consider that there is an at least arguable ‘*Robinson* obvious’ error (see *R v SSHD ex parte Robinson* [1998] QB 929). At para. 30, the judge said that she was “unable to reach a decision that Article 8 family life is engaged ...” in relation to the appellant’s relationship with his (ex)wife. That was a disputed issue at the heart of the proceedings: see the supplementary decision letter of the Secretary of State dated 18 November 2022. The judge concluded that it would be necessary for the Secretary of State to conduct her own further enquiries upon receipt of her decision “in an attempt to ascertain the true circumstances.” Two arguable errors flow from this. First, it was arguably incumbent upon the judge to reach a finding either way, rather than leave her non-findings hanging in that manner. Secondly, at paras 22 and 23, the judge appeared to find that the appellant and his wife were in a relationship but had sought to conceal it. That finding was arguably inconsistent with the judge’s later finding that she could not make findings on that very issue.
2. Arguably, these factors went to the heart of the appellant’s Article 8 assessment, and whether he had a genuine and subsisting parental relationship with a British child.’

10. By means of a Rule 24 response dated 16 May 2023, Mr C Bates, Senior Presenting Officer, confirmed on behalf of the respondent that there was no objection to the decision of the First-tier Tribunal being set aside. The respondent cross-appealed by the same document.

Discussion

11. Before this Tribunal both Mr Maqsood and Mr Basra agreed that the Judge materially erred in law and that the proper course was for the Judge’s decision to be set aside, with no preserved findings of fact, and for the

matter to be remitted to the First-tier Tribunal. For the short reasons given below, I agree with this course of action.

12. The respondent quite properly does not oppose the appellant's application for permission to appeal on the *Robinson* obvious point identified by Upper Tribunal Judge Stephen Smith. There is a clear contradiction in the Judge's consideration whereby she decides at [30] of her decision that she is unable to reach a decision as to whether article 8 family life is engaged in respect of the appellant's relationship with his wife, in circumstances where, at [22] and [23] of the decision the Judge concluded that the appellant and his wife were in a relationship but have sought to conceal it. Such findings are inconsistent and establish a material error of law.
13. Mr Maqsood accepted that there were merits to the respondent's cross-appeal. At its core, the complaint is that the Judge found the marital relationship had existed longer in time than the appellant himself contended, with no attendant explanation for such finding of fact. As observed by the respondent, there is no explanation as to how the appellant would benefit by concealing the length of the relationship he now relies upon. The failure to provide an explanation is a material error of law.
14. In the circumstances and observing the nature of the material errors of law, the proper course is to set aside the decision of the First-tier Tribunal and to preserve no findings of fact.
15. I am mindful that the Upper Tribunal will usually proceed to consider an appeal at a resumed hearing. However, in this matter, I am satisfied that the identified material errors are such that the core of the appellant's appeal, namely his relationship with his wife and their children, has yet to be considered on appeal. In such circumstances it is fair and just that the appellant be permitted the opportunity to have his case considered before the First-tier Tribunal.

Notice of Decision

16. The decision of the First-tier Tribunal dated 1 February 2023 is subject to material error of law and is set aside.
17. No findings of fact are preserved.
18. The resumed hearing of the appeal will take place in the First-tier Tribunal at Taylor House to be heard by any Judge other than Judge of the First-tier Tribunal Colvin.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

16 June 2023

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