



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-004862

First-tier Tribunal No:
HU/59969/2022
LH/01958/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 7th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BEN KEITH

Between

MUHAMMED HAROON
(ANONIMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Ms Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 15 December 2023

DECISION AND REASONS

1. At the hearing on 15 December 2023, I gave judgment in the case setting out my reasons. However, the Court recording system did not pick up the judgment. As a result I give the reasons for my decision in writing having unsuccessfully attempted to retrieve the recordings.

2. This is an appeal against the decision of First-tier Tribunal Judge Wyman (“the Judge”) dated 8 August 2023. By that judgment she refused the Appellant’s human rights claim under Article 8 ECHR.

3. The Appellant is a national of Pakistan born 9 April 1991 he appealed on human rights grounds against the respondent's decision dated 28 November 2022 refusing his application for leave to remain dated 19 October 2022. The judge found that there were not insurmountable obstacles to the Appellant and his wife relocating to Pakistan. However, at the end of the hearing the judge notes that additional evidence was sought to be submitted the judge stated:

“30. At the end of the hearing, the appellant stated that he had been granted refugee status in Italy. He explained that in 2015, after his leave expired, he had moved to Italy where he had been granted this status. This information was not previously before the Tribunal and there was no documentary evidence of the same. His solicitor was not aware of any status he had been granted by a third country. Mr Haroon explained that he had told a previous solicitor but was unaware if he had specifically spoken to his current solicitor about this.

31. Given this new information I gave the appellant 24 hours in which to forward any relevant documents to me after the hearing. I did not hear from the appellant with any further documentary evidence within that timescale. However, it is possible that if he is correct, this could impact the appellant's status in the United Kingdom as he may be able to transfer his status from Italy to the United Kingdom. This clearly is a matter for the appellant to discuss with his solicitor and is not a matter for this court.”

4. Permission to appeal was granted by FTT Judge Mills on 25 September 2023. Judge Mills noted that in fact the Appellant had submitted the material to the tribunal and having examined the FTT system said:

4. As stated, the appellant is now unrepresented and his grounds for permission to appeal, along with a supporting statement from his wife, largely read as a simple disagreement with the Judge’s conclusions that there were no insurmountable obstacles to the couple living together in Pakistan. However, the grounds also comment that the requested further evidence was sent the day after the hearing, and complain that they were not considered by the Judge.

5. Having considered the documents section of the online portal I can see that a supplementary bundle, including untranslated documents that appear to show that the appellant was recognised as a refugee in Italy in 2017, were uploaded on the day following the hearing as requested. The Judge did not sign his decision for a further 13 days thereafter.

5. I have before me today the Appellant and the document in question which I have examined which on its face seems to say that he was granted refugee status in Italy. I make no finding as it is untranslated and unverified. However, it does potentially significantly change the factual matrix.
6. Ms Gilmour submitted that this was a new matter and the SSHD had not had the opportunity to properly respond. She did not however dispute the fact that the new evidence had been submitted to the First Tier Tribunal as recorded by that system.
7. In my judgment the Judge failed to take account of the Italian evidence as for whatever reason that material did not make its way from the Court system to the judge, that in my judgment is a material error of law and makes the First Tier Judgment procedurally unfair.
8. In relation to disposal I agree with Ms Gilmour that the SSHD must have adequate opportunity to respond and the case will have to be reheard. Considering the interests of justice and the Presidential Guidance I therefore remit the case to the First Tier Tribunal for a rehearing. I do not preserve any findings of fact.

Notice of decision

1. There was a material error of law and the decision of the First Tier Tribunal is set aside.
2. The case is remitted to the First Tier Tribunal for rehearing.

Ben Keith

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 February 2024