



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

Appeal Number: IA/28974/2013

THE IMMIGRATION ACTS

Heard at Field House

On 26th March 2014

**Determination
Promulgated**

On 23rd April 2014

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**SHAFQAT HUSSAIN SYED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Ms A Everett, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 9th January 1987. The Appellant first arrived in the UK on 23rd November 2011 when he was given leave to enter as a Tier 4 (Student) Migrant eventually until 3rd July

2013. On 18th March 2013 the Appellant applied for further leave to remain citing his human rights. On 18th April 2013 his leave as a student was curtailed to cease on 17th June 2013, and on 25th June 2013 the Respondent refused the Appellant's application for leave to remain for the reasons given in a Refusal Letter of that date. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Youngerwood (the Judge) sitting at Taylor House on 5th February 2014. He decided to dismiss the appeal for the reasons given in his Determination dated 10th February 2014. The Appellant sought leave to appeal that decision, and on 28th February 2014 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside. At the hearing, there was no appearance by or on behalf of the Appellant. I decided to hear the appeal in the absence of the Appellant in accordance with the provisions of Rule 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was satisfied that the Appellant had been notified of the hearing as required by those Rules, and there was no explanation for his absence.
3. The Judge decided to dismiss the appeal under the Immigration Rules. That decision has not been impugned in this appeal. The Judge went on to dismiss the appeal on Article 8 ECHR grounds. The Judge found that there was very limited evidence of the Appellant's private life in the UK, and that any interference with that private life as a consequence of the Respondent's decision would not be of sufficient gravity to engage the Appellant's Article 8 rights. Alternatively, the Judge found such interference to be proportionate.
4. Having heard a submission from Ms Everett which is recorded in the Record of Proceedings, I find no error of law in respect of this part of the Judge's decision. As the Judge commented, there was no evidence before him specifically relating to the Appellant's private life in the UK, and the Appellant failed to satisfy the requirements of paragraph 276ADE of HC 395. In that event, it was open to the judge to find that the Appellant's Article 8 ECHR rights were not engaged as a consequence of the Respondent's decision.
5. However, I do find an error of law in this respect. It was part of the Appellant's case that he would be at risk on return to Pakistan and therefore that the Respondent's decision amounted to a breach of the Appellant's Article 3 ECHR rights. The Judge failed to deal with this issue at all and in my judgment that amounts to an error of law. Ms Everett did not argue to the contrary.

Re-made Decision

6. As a consequence of my finding of an error of law as described above, I set aside any decision of the Judge relating to the Appellant's Article 3 ECHR rights. I will re-make that decision.
7. The Appellant did not attend the hearing before the First-tier Tribunal, and has not attended this hearing. There is therefore no oral evidence from him, tested by cross-examination, as to his claim to be at risk on return. The only evidence in support of the Appellant's claim amounts to a letter from the Appellant's representatives sent along with the application for leave to remain. It states that the Appellant came to the UK in order to escape numerous death threats made by the family of a former girlfriend. Apparently the Appellant had formed a relationship with a local girl in September 2009. She was a Shia Muslim whereas the Appellant was a Sunni Muslim, and she was from a different caste. There had been a sexual relationship between them for about twelve months before they had been discovered. The Appellant had been attacked by the girl's family and shot whereupon the relationship had come to an end. The girl's family had sworn to kill the Appellant and had beaten him by smashing bottles over his head when the Appellant had suffered serious injuries which had required hospital treatment. The Appellant had also been disinherited by his family.
8. There was also medical evidence that in January 2010 the Appellant had been hospitalised for a period of five days as a result of head injuries, although that medical evidence did not give any sort of opinion as to how those injuries had been sustained. There was also a "deed of disinheritance" from the Appellant's father relating to the Appellant.
9. The burden of proof is upon the Appellant. I am not satisfied by evidence of this nature even to the lower standard of proof that there is any truth in the Appellant's claim and therefore I find that I am not satisfied that the Appellant has shown that the Respondent's decision will result in any breach of the Appellant's Article 3 ECHR rights.
10. To summarise, I find no error of law in the decision of the First-tier Tribunal to dismiss the appeal on Article 8 ECHR grounds. I do find an error of law in respect of the Appellant's Article 3 ECHR rights. I remake that decision by dismissing the appeal.

Anonymity

11. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to do so.

Signed

Date

Upper Tribunal Judge Renton