Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03897/2014

THE IMMIGRATION ACTS

Heard at North Shields
On 6 January 2015
Prepared 7 January 2015

Determination Promulgated
On 14 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

FAIZAN AHMED

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person
For the Respondent: Ms Rackstraw, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan, born on 25 November 1980. He entered the UK as a student with leave to remain until 31 October 2005. That leave was then varied so that it expired on 31 October 2006, and then again until 31 October 2007. A further application to vary his leave was unsuccessful, but he was then granted leave to remain as a student until 31 January 2009. There were then two applications during 2009 for a grant of leave to remain which were unsuccessful, but he was eventually successful with a third, so that he

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was granted leave to remain as a student until 31 January 2011. An application to vary that grant of leave was unsuccessful, and the decision to refuse it prompted an appeal. His appeal rights were duly exhausted on 29 March 2011. Further applications for a grant of leave to remain outside the Immigration Rules were made on 13 May 2011, 16 August 2011, 30 November 2011, and 8 February 2012.

2. At interview on 1 December 2011 the Appellant asserted that he was prepared to return to Pakistan within 7 days and would purchase his own air ticket to do so. He never took any steps to do so. Instead upon being detained by the Respondent in Glasgow on 23 July 2013 in order to effect his removal to Pakistan he claimed asylum.

3. The Respondent’s most recent decision to remove the Appellant was therefore made on 29 May 2014, when his asylum claim was refused. (It is plain that earlier decisions to remove either went unchallenged, or were unsuccessfully challenged.) It was against the removal decision of 29 May 2014 that the Appellant most recently appealed to the Tribunal. His appeal was heard on 10 July 2014, and dismissed in a Determination promulgated on 24 July 2014 by First Tier Tribunal Judge Manchester.

4. By a decision of First Tier Tribunal Judge Page dated 18 August 2014 the First Tier Tribunal decided that the Appellant’s application for permission to appeal was made out of time by five days, and declined to extend time on the basis that the Appellant had offered no explanation for the tardy application. Whether or not that decision was correct (and the Appellant argues that it was not) the Judge went on to decide that the application would have been refused in any event because the handwritten grounds disclosed no arguable error of law in the Determination, and amounted merely to a disagreement with the Judge’s findings.

5. The Appellant duly renewed his application for permission to appeal to the Upper Tribunal. Although the application was granted, the text of the decision does not expressly engage with the issue of whether or not the application to the First Tier Tribunal was in time. It is however perhaps implicit in the grant of permission that it was considered to be in time. However the text of the decision indicates that the intention of the decision maker was to refuse the application for lack of substantive merit; *This application fails to identify any properly arguable material error of mistake of law in the judge’s determination or defect or impropriety of a procedural nature in the proceedings at first instance. It is nothing more than a series of disagreements. The appellant did not give a truthful account: he was found not to be credible. The appellant cannot bring himself within the requirements of the Immigration Rules and it cannot properly be said that there is anything about the appellant or his circumstances which would permit the judge to allow the Article 8 claim outside the rules.*

6. The Respondent filed a Rule 24 Notice on 29 September 2014. She pointed out that the Upper Tribunal plainly intended to refuse the application for permission, and that it had been granted in error. She invited the Upper Tribunal to correct the mistake, and reissue the decision upon the application as a refusal of permission.

7. For whatever reason the matter has not been the subject of any further judicial consideration, or directions, and thus the matter comes before me.

8. Neither party has applied for permission to rely upon further evidence pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules 2008.

The criticisms relied upon by the Appellant

9. In all the circumstances of this case I propose to treat the original application for permission as being in time, given the date stamps upon the Determination which records it as having been promulgated on both 24 July and 28 July 2014.

10. The handwritten grounds to the application before the First Tier Tribunal raise different points to those raised in the typed grounds to the application before the Upper Tribunal. I therefore invited the Appellant to explain what he considered to be the error(s) of law that he relied upon.

11. The Appellant’s response was; first, that he had no ties to Pakistan, and thus he should have been granted leave to remain under paragraph 276ADE of the Immigration Rules. He accepted that he was the only person to have given oral evidence, but referred me to the bundle of documents prepared for the hearing at first instance which contained letters from his brother, and his friend, and thus evidence concerning the “private life” he had established whilst living in the UK [ApB pp12-14]. Second, he relied upon the lack of general safety in Pakistan, the activities of terrorists, and the advice of the FCO to British citizens that travel to Pakistan carried a high risk. Finally the Appellant asked me to take into account the content of a document dated 5 January 2014 which he handed up, entitled “note of Appellant’s written submissions”.

12. The first of these complaints lacks merit because it amounts to a bald disagreement with the Judge’s finding that the Appellant did maintain ties to Pakistan, despite the length of time that he had contrived to live in the UK. That finding was well open to the Judge to make, as a consequence of the unchallenged finding (that was based upon the Appellant’s own evidence) that his parents were both alive and living in Pakistan, and that he had travelled to Pakistan to visit them twice since his first entry to the UK. It is not enough for the Appellant to simply and baldly deny the existence of ties to Pakistan,

and on the available evidence the Judge did conduct an entirely adequate assessment of all of the relevant evidence and circumstances in arriving at this conclusion on the issue.

13. The second of these complaints also lacks merit because it is a bald disagreement with the assessment of risk of harm faced by the general population of Pakistan. The general security situation within Pakistan has of course very recently been considered by the Upper Tribunal in the course of AK & SK (Christians; risk) Pakistan CG [2014] UKUT 569. Whilst the country undoubtedly faces many problems the situation is not such as to found a claim for international protection by the ordinary citizen.

14. In the grounds to the application before the First Tier Tribunal the Appellant additionally relied upon the complaint that the Judge had failed to consider why his elder brother had moved from Pakistan to the UK, and whether their circumstances might be linked for the purpose of establishing a grant of leave to remain. There is no merit in that complaint because the Appellant failed to place before the Judge any evidence to suggest that his family relationship to his elder brother gave rise to any risk of persecution, or serious harm, upon return to Pakistan. It was not for the Judge to speculate on such a matter, or to conduct some enquiry into the circumstances of his elder brother; particularly so when (as here) the elder brother had given written evidence, and neither he nor the Appellant had raised the matter.

15. In the grounds to the application before the Upper Tribunal the Appellant additionally relied upon the complaint that the Judge had failed to consider his Article 8 appeal outside the Immigration Rules. There is no merit in that complaint because the Judge did so in paragraphs 46-48 of the Determination.

16. Finally, in the written submissions that were relied upon at the hearing before me, the Appellant advanced an entirely new point, namely that the Judge failed to consider s117A of the 2002 Act (introduced with effect from 28 July 2014). Whilst this point has not been subject of any application for permission to appeal, or grant, in the circumstances of this case it is expedient for me nonetheless to deal with it.

17. Whilst the Determination is indeed silent in relation to s117A and s117B of the 2002 Act, upon a fair reading of the Determination as a whole it is plain that the issues raised therein have been dealt with expressly or by implication by the Judge. Thus it is clear that the Judge had well in mind that the maintenance of effective immigration controls was in the public interest; s117B(1). The Appellant does speak English given his lengthy education in the UK; s117B(2). The Appellant is not financially independent since he had no leave which would permit him to take lawful full time employment capable of

extension by operation of s3C. Nor did the evidence before the Judge suggest he was independently wealthy as a result of savings or inheritance, and thereby able to support himself; s117B(3). Any private life formed by the Appellant since his entry to the UK in 2005 has been created whilst his immigration status has been precarious. Moreover for a large part of the time that he has physically been living in the UK, he has been doing so unlawfully; s117B(4)(5). The Appellant did not claim to have any relationship with any partner, or any “qualifying child”; s117B(6).

18. In the circumstances the failure of the Judge to deal in express terms with s117A and s117B either gives rise to no arguable error of law, or to no error of law that requires me to set aside the decision he made upon the Article 8 appeal and remake it. In short it is plain to me that were I to seek to remake the decision upon the Article 8 appeal I would be bound to reach exactly the same overall decision that the Judge did, and for the same reasons. The evidence as to what precisely the Appellant has done with his time whilst living in the UK was scant indeed.

19. Although the Appellant relied upon a close relationship with his elder brother, at the date of the hearing and for some time previously the latter lived in Edinburgh, and the Appellant lived in Middlesbrough. The evidence suggested that this was a situation that had endured for some five years. The evidence did not disclose any reason for that, or how often the brothers met, or how the Appellant supported himself financially. The brief letter from the Imam at the Mosque in Middlesbrough merely confirmed that the Appellant had attended that Mosque over the course of the previous year, that he had participated in events at the Mosque and was prepared to give his free time to undertake chores. No details of the frequency of his attendance, or the nature of the work undertaken were given, and the author did not attend the hearing of the appeal. No evidence suggested the Appellant had changed mosque, and thus the evidence suggested that this was a part of his lifestyle developed only recently, and in the last twelve months. The friend who wrote a letter of support spoke of shared social activities over the previous five years, but not of any other friends, or relationships developed by the Appellant.

20. Even taking this evidence at its highest it therefore offered very little insight upon how the Appellant had actually spent his time, how he had supported himself financially, or the connections and relationships that he had formed during the nine years he had lived in the UK.

21. As the Judge found, there was nothing to prevent the Appellant returning to Pakistan to use the qualifications for which he had studied in the UK, and to resume the “private life” that he had in that country with his parents, and his extended family, and the friendships

that he must have had before he came to the UK. In all the circumstances of this case there was in my judgement nothing disproportionate about the Respondent’s most recent decision to remove the Appellant to Pakistan.

Conclusion

22. The Determination does not disclose any material error of law in the Judge’s approach to the evidence placed before him that requires me to set aside his decision and remake it. That being so I dismiss the Appellant’s appeal.

23. No anonymity order was made by the Tribunal at first instance, none is requested on behalf of the Appellant now, and there is no obvious reason why I should make one of my own motion.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 24 July 2014 did not involve the making of an error of law that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

Deputy Upper Tribunal Judge JM Holmes
Dated 7 January 2015