



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

Appeal Number: IA/30029/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 8 October 2015

Promulgated

On 14 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

MR VIJAY CHAUHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hashim of Counsel instructed by E1 Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

The History of the Appeal

1. The Appellant, a citizen of India, appealed against the decision of the Respondent refusing his human rights claim and giving removal directions. His appeal was heard on 11 March 2015 by Judge Coffey sitting at Hatton Cross. Both parties were represented, the Appellant by Ms Zahra Ahmed of Counsel. In a decision of 9th, promulgated on 10th, April, the appeal was dismissed on Article 8 human rights grounds.

2. Permission to appeal was granted on 2 July 2015 by Judge Fisher in the following terms:

“1. Permission is sought, in time, to appeal against the decision of First-tier Tribunal Judge Coffey, promulgated on 10th April 2015, in which she dismissed the Appellant’s appeal against the decision to refuse him leave to remain in the United Kingdom on compassionate grounds outside the Immigration Rules.

2. The rather lengthy grounds seeking permission assert that the Judge erred in law in her assessment of Article 8 under the ECHR. The Respondent had accepted that there was family life between the Appellant, his spouse and her two children, but at paragraph 80 of her lengthy decision, the Judge said that the Appellant could not ‘show any reason which engages Article 8’. It may be the case that the Judge intended to convey a finding that the decision was proportionate, but that is not how she expressed herself. Furthermore, at paragraph 78, the Judge found that some of the evidence before her had been rehearsed with the use of a notebook, and that it was contrived. Counsel who appeared for the Appellant has provided a witness statement in which, at paragraph 5, she indicates that, when the Appellant’s spouse was asked in cross examination about the notes which were before her, those notes were handed to the Judge who then indicated that there was nothing of concern therein.

3. It is arguable that the Judge has erred in law, confusing herself as to whether Article 8 was engaged at all, and in making adverse credibility findings on the basis of notes which she had accepted as innocent. Accordingly, I grant permission to appeal. All grounds are arguable.”

3. In a Rule 24 response on 20 July 2015 the Respondent sought to uphold the decision, essentially on the basis that the permission application represented a disagreement with its findings, which were reasonably open to the Tribunal.

4. The Appellant, together with his wife and his Counsel and solicitor, attended the error of law hearing before me. This took the form of submissions, which I have taken into account. I reserved my determination.

Determination

5. At paragraph 78 Judge Coffey wrote:

“Mrs Kaur’s evidence was regrettably rehearsed with the use of a notebook as observed by the Respondent and brought to my attention at the conclusion of her evidence. I find her evidence contrived and inherently unreliable.”

6. In evidence before me is a statement by Ms Zahra Ahmed, who represented the Appellant at the appeal. At paragraph 5 she wrote:

“Ms Kaur, the Appellant’s spouse was asked by the Home Office representative about the notes she had in front of her. Ms Kaur handed these notes to the judge and to the Home Office Representative. At the hearing the judge indicated that she was satisfied there was nothing of concern in these notes.”
7. There is no evidence about this matter from the Presenting Officer who represented the Respondent before Judge Coffey. I accept the evidence of Ms Ahmed. It follows that it was procedurally improper for the judge to draw an adverse inference from Mrs Kaur’s reference to a notebook after indicating that it did not give rise to concern without having afforded the Appellant the opportunity to address this. This conclusion clearly contributed to the negative credibility finding of the judge about Mrs Kaur. It was a material error of law.
8. At paragraph 45 Judge Coffey recorded the evidence of the Appellant that Mrs Kaur had only been to India for a couple of occasions. At paragraph 47 she recorded that her British passport was checked in cross-examination and showed multiple visits to India in 2009. This is factually incorrect. The passport was produced to me, and shows only one visit to India.
9. At paragraph 26 the judge correctly recorded that the Respondent admitted that the relationship between the Appellant and his spouse and her two children from a previous relationship was genuine and subsisting. This does not sit easily with her marginalisation of that relationship at paragraph 79, nor with her language, albeit unhappy, in paragraph 80 that the Appellant could not show any reason which engages Article 8. This was to reopen an issue accepted by the Respondent. To do so was an error of law, material because it was capable of, and did, influence the decision.
10. Cumulatively these errors of law are material. They undermine the reasoning in the decision, which cannot stand. I set it aside.
11. The appeal needs to be reheard in its entirety. This will involve consideration of a significant quantity of evidence, including that to which I now refer. It is therefore appropriate for the appeal to be reheard in the First-tier Tribunal, by any judge other than Judge Coffey.
12. At paragraphs 4 and 6 of her statement, Ms Ahmed refers to evidence supplied by the Appellant to the Respondent but not placed in evidence by the Respondent before the Tribunal. This includes handwritten letters from Mrs Kaur’s daughters, family photographs of family trips, occasion cards and other evidence of family life. Even though the Respondent accepts that the relationship is genuine and subsisting, this evidence is material and should be before the Tribunal. Pursuant to the Procedure

Rules I direct the Respondent to serve upon the Tribunal and the Appellant within thirty days of receipt of this decision a supplementary bundle comprising copies of all material supplied by the Appellant which the Respondent has not already placed in evidence.

Decision

13. The decision contains material errors of law, and is set aside.
14. The appeal is to be reheard in the First-tier Tribunal at Hatton Cross before any judge other than Judge Coffey.
15. Direction to the Respondent in paragraph 9 above.

Signed
October 2015

Dated: 13

Deputy Upper Tribunal Judge J M Lewis