



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/28887/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 9<sup>th</sup> June 2017**

**Promulgated**

**On 20<sup>th</sup> June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR SALEEM RAJA**

**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan born on 1<sup>st</sup> January 1970. The Appellant has an extensive immigration history. Having entered the UK in December 2000 illegally through an agent he married his wife G A on 27<sup>th</sup> June 2002 and on 6<sup>th</sup> February 2003 their daughter H was born. As is pointed out to me H is now over 14 years old. On 13 November 2003 Mr Raja applied for leave to remain as the spouse of a settled person and this was granted on 4<sup>th</sup> March 2005 and in accordance with the appropriate practice was for a two year period. It is Mr Raja's evidence to me that in 2007 he suffered a very serious knife injury to his hand but despite this he

did submit an application to the Secretary of State but was advised that the application, which I assume was to continue his leave, was not processed until 2011. That evidence is not supported by the Secretary of State. It is the Secretary of State's position that Mr Raja remained an overstayer and on 2<sup>nd</sup> May 2014 he submitted an application for family and private life leave to remain which was refused in July 2014. On 12<sup>th</sup> March 2015 he was listed as an absconder after failing to adhere to his temporary admission restrictions. On 1<sup>st</sup> April 2015 he made a human rights application for leave to remain on the basis of his family life and that was refused by Notice of Refusal dated 19<sup>th</sup> May 2015.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Herbert sitting at Taylor House on 20<sup>th</sup> October 2016. In a decision and reasons promulgated on 7<sup>th</sup> November 2016 Judge Herbert dismissed the appeal under the Immigration Rules but allowed the appeal under Article 8.
3. The Secretary of State lodged Grounds of Appeal to the Upper Tribunal on 16<sup>th</sup> November 2016. Those grounds contended that there had been a failure to engage with the requirements of Section 117B(6) and the guidance set out in *MA (Pakistan) and Others [2016] EWCA Civ 705* taking into account the Appellant's poor immigration history including the fact that he absconded and the fact that he had previously been arrested for common assault against his wife and balancing this against whether it would be reasonable to expect the children to leave the UK Article 8 was engaged.
4. On 28<sup>th</sup> April 2017 Judge P J M Hollingworth granted permission to appeal. In doing so Judge Hollingworth considered that it was arguable that the judge, having found that the Appellant was not telling the complete truth, but telling a partial truth about his personal circumstances, fell into error at paragraph 23 of the decision by concluding that the Appellant had developed a significant family and private life with his children given the ambit of the available evidence. Judge Hollingworth noted that at paragraph 27 of the decision the judge had described it as a finely balanced case and that the judge stated that he had listened carefully to the evidence and made an assessment based on the Appellant's answers to questions which was far more detailed in relation to his relationship with the children than it was to his relationship with the wife. The judge had gone on to state that the judge found that the Appellant was not being entirely truthful and that the judge did not find that he was currently in a relationship with his wife but found it was more probable than not that he lived in the same household with the children and therefore had an intimate knowledge of them. The judge considered that it was arguable that the judge had attached insufficient weight to the factors weighing against the Appellant in terms of the balance with the public interest and consequently granted permission to appeal.
5. It is on that basis that the matter comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears in person and is accompanied by

his wife. The Secretary of State appears by her Home Office Presenting Officer Ms Isherwood. For the purpose of continuity in the appeal process Mr Raja is referred to herein as the Appellant and the Secretary of State as the Respondent.

6. As a preliminary issue I explained to the Appellant the issue that was outstanding before me, namely whether or not there was a material error of law. He indicated he understood the process and I further indicated to him that once I had heard full submissions from Miss Isherwood I would listen to anything else he had to say without interruption.

### **Submissions/Discussion**

7. Ms Isherwood advises that she relies on the Grounds of Appeal. She points out that paragraph 2 of the First-tier Tribunal Judge's decision sets out his immigration history and indeed paragraph 2 reflects matters that I have referred to in the first paragraph of this decision. She goes on to contend that the judge finds that the Appellant's leave was not precarious and she submits that that cannot be the case bearing in mind that it is reflected at paragraph 27 that the Appellant only had leave for two years and that thereafter there was a period of some seven years when the Appellant was an overstayer and that consequently his position must have been precarious throughout that period. Consequently she submits that following the Rule i.e. paragraph 117B little weight should be given to the Appellant's private life. She contends that the judge is wrong to have described this matter as finely balanced and refers me back to the Notice of Refusal pointing out that the Appellant was written to on two occasions to produce documentary evidence and that he failed to do so other than some photographs from a mobile phone, and that neither his wife, teenage daughter nor his son was called to give any further evidence. She submits that there was a material error of law therefore in the finding of the First-tier Tribunal Judge and asked me to set aside the finding of Judge Herbert allowing the Appellant's appeal under Article 8.
8. The Appellant and his wife, whilst failing to produce any documentary evidence, makes it clear that their belief was that there was a further application pending before the Secretary of State and that they were advised it would take some four years for this to be processed. They indicated at that stage that they placed reliance on lawyers but they acknowledge that they have no correspondence to support the position. Further they point out that they are a well-established family and that their daughter has lived here all her life and has been here consequently now for over fourteen years. They appear somewhat bemused by the current legal process.

### **The Law**

9. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational

conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

10. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## Findings

11. It is important to remember what I am being asked to do in this matter. I am being asked to find that there has been a material error of law in the decision of the First-tier Tribunal Judge. Much depends on the precariousness of the first Appellant's status. I am mindful that it was not challenged in 2005 that the Appellant was married with a child and applying for settlement and whilst it is difficult to prejudge how an application for settlement thereafter, if made promptly, would have been addressed by the Secretary of State, there appears to be little reason to suppose that providing the Appellant showed that the marriage was subsisting that his application would thereafter succeed. What appears to have taken place is a difference of opinion as to whether any application was made. It is not my job to rule on that factor but I do emphasise the point that there appears to be no evidence produced to show that that application was made despite the protest of the Appellant and his spouse that there was such an application. In such circumstances at paragraph 22 where the First-tier Tribunal Judge finds that prior to 2014 the Appellant's status was not precarious is, I agree with the submissions of Ms Isherwood, inconsistent with the immigration history which clearly indicates that the Appellant had never had indefinite leave to remain and had always been dependent on further leave being granted to allow him to stay in the UK. Consequently his status had always been precarious and little weight should have attached to his private life under Section 117B(5). To this extent I am satisfied that in finding that the Appellant's status was not precarious constituted a material error of law.
12. It seems clear that part of the problem that has arisen in this case has been the failure of the Appellant to provide appropriate documentary evidence and it is clear also from oral testimony that he and his spouse

provide that they are reluctant to spend money on solicitors. With respect to the Appellant it is for him to present his case. It is for him to show that there is genuine family and private life and I note that in dealing with the appeal the First-tier Tribunal Judge has not engaged with the requirements of Section 117B(6) and the guidance set out in *MA (Pakistan) [2016] EWCA Civ 705* taking into account the Appellant's poor immigration history and balancing this against whether it would be reasonable to expect the children to leave the UK if Article 8 was engaged.

13. I am consequently assisted by Ms Isherwood's comment that she agrees that if I find there is a material error of law it is not for this court at this stage to address the position because the matter would require further evidence. I am satisfied therefore that the correct approach for the above reasons is to find a material error of law and to set aside the decision of the First-tier Tribunal Judge with none of the findings of fact to stand and to remit the matter back to Taylor House to be heard with an ELH of two hours. It is not for the Tribunal to give advice per se to the Appellant but I hope he has taken on board the recommendation I gave to him that if this matter is remitted, as it is, that it would be in his best interest to instruct respected and responsible solicitors to lodge and file evidence on his behalf and to represent him before the First-tier Tribunal.

### **Notice of Decision**

The decision of the First-tier Tribunal contains a material error of law and is set aside. The matter is remitted back to the First-tier Tribunal at Taylor House with the following directions:

- (1) None of the findings of fact are to stand.
- (2) The matter to be heard at Taylor House before any First-tier Tribunal Judge other than Immigration Judge Herbert on the first available date 28 days hence.
- (3) That there be leave to either party to file and serve additional subjective and or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (4) That if the Appellant seeks an interpreter to attend the restored hearing then he must do so within seven days of receipt of this decision advising the Tribunal as to the language (presumably Urdu) required.

No anonymity direction is made.

Signed D N Harris  
Deputy Upper Tribunal Judge D N Harris

Date 15<sup>th</sup> June 2017

### **TO THE RESPONDENT FEE AWARD**

No application is made for a fee award and none is made.

Signed D N Harris  
Deputy Upper Tribunal Judge D N Harris

Date 15<sup>th</sup> June 2017