Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06510/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th October 2019	**On 18th October 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

IMRAN SARKER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Karim, instructed by Shah Jalal Solicitors
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh born on 9 November 1990. He appeals against the decision of First-tier Tribunal Judge G D Davison, promulgated on 10 July 2019, dismissing his appeal against the refusal of leave to remain on human rights grounds.

2. Permission to appeal was granted by First-tier Tribunal Judge G Wilson for the following reasons: “The grounds assert that the judge erred as he failed to identify and properly apply material law. It is at least arguable that the judge did not apply the dicta set out in R (Razgar) [2004] UKHL. This is arguably a material error.”

© CROWN COPYRIGHT 2019

Submissions

3. Mr Karim submitted that the judge materially erred in law at paragraph 18 of his decision, in which he stated: "I do not find any exceptional reasons to consider the appeal outside the framework of the Rules." The judge erred in failing to consider Article 8 outside the Rules and failing to consider the injustice caused to the Appellant by the allegation of submitting a false English language test certificate. The judge found in the Appellant's favour in relation to the ETS issue.

4. Mr Karim relied on paragraph 6 of the Appellant's witness statement, which stated:

> "I sought employment with many companies. Some of them selected me but asked me about the Test of English for International Communication, TOEIC, whether or not I had attended the test. Due to this no longer recognised test, I was not assigned a certificate of Sponsor, COS, as the Home Office is now very critical of TOEIC.

5. Mr Karim submitted that any further application the Appellant attempted to make had been tainted because of the previous allegation of submitting a false ETS certificate. The judge should have considered any injustice caused to the Appellant in relation to the ETS issue. The Appellant should be able to make a fresh application with his name cleared. There was evidence that he had been unable to obtain employment which the judge had failed to take into account in an Article 8 assessment outside the Immigration Rules. Mr Karim accepted that the Appellant's appeal under the Rules had no prospect of success, but the judge should have made findings in accordance with Ahsan v SSHD [2017] EWCA Civ 2009.

6. Mr Bramble submitted that the judge set out Razgar at paragraph 7 and Section 117B at paragraph 8. He relied on counsel's submission at paragraph 16:

> "The Appellant stated the thrust of this claim was to clear his name. The ETS allegation, if held up, would haunt future applications. It was stated that there is a 'high threshold' in Article 8 claims but I was invited to find the Appellant has some private life here. But counsel realistically submitted 'I can't make too many points on this'."

7. Mr Bramble submitted there was insufficient evidence, other than that referred to at paragraph 6 of the witness statement, to show that the Appellant's private life had been affected by the allegation of dishonesty. In any event, the judge did go on to consider Article 8 outside the Immigration Rules and found that the Appellant's private life was not of a significant nature such that his removal would be disproportionate. The judge's findings at paragraph 18 were sufficient. The judge had addressed all relevant issues.

8. Mr Karim submitted that the Appellant was found to be a credible witness and therefore there was no reason to reject the matters relied on in the witness statement. The Appellant had been a victim of a wrongful allegation of dishonesty and had been deprived of obtaining a certificate of sponsorship. It was not lawful to remove the Appellant because of a wrongful allegation of dishonesty. The Appellant should be given a period of leave to make a fresh application. He should not be required to return to Bangladesh and obtain entry clearance because of the injustice caused. The judge had failed to deal with the injustice in this case in his Article 8 assessment.

Conclusions and reasons

9. At paragraph 18 the judge made the following findings:

> "Counsel on behalf of the Appellant was fair and realistic in her submissions regarding Article 8. Given the Appellant's family in Bangladesh, his level of education and that he only came to the UK on a temporary student visa he has not established very significant obstacles to his reintegration. No such significant obstacles were raised. I accept the Appellant may be lacking some practical work experience, but he would be returning with international qualifications. If these qualification (sic) in any way hindered a person's opportunity in gaining employment there would be very little point in families spending the vast sums of money that they do to have their children educated in the UK. I do not accept that he would be disadvantaged and precluded from finding employment. I find that he could reside with his family, as he did before he came to the UK, until he was in a position to set himself up. The papers do not advance any very significant obstacles to reintegration. I find that none exist. I do not find any exceptional reasons to consider the appeal outside of the framework of the Rules. The Appellant has studied in the UK, he has family back home to whom he could return to (sic). The public interest provisions of maintaining effective immigration control weigh against the Appellant. I do not find requiring him to leave to be disproportionate. I accept, as counsel submitted, that he has an element of private life in the UK. But this private life is far from being of such a significant nature that it requires protection under Article 8."

10. I find that, having cited Razgar at paragraph 7 and Section 117B at paragraph 8, the judge was well aware of his requirement to assess the Article 8 application under the Immigration Rules and outside the Immigration Rules. It was conceded there were no very significant obstacles to reintegration in Bangladesh and there was no challenge to the judge's finding that the Appellant could not satisfy the Immigration Rules.

11. At paragraph 18 the judge assessed the Appellant's private life and his finding that there were no exceptional circumstances to consider the appeal outside the Rules did not mean that he did not do so. The judge clearly went on, in paragraph 18, to assess Article 8 outside the Rules,

dealing with the public interests of maintaining immigration control and the precariousness of the Appellant's private life.

12. Mr Karim submitted the judge failed to take into account the injustice caused by the false allegation of dishonesty. I find that this was not material. On the facts, the Appellant came to the UK as a student in 2009. He was granted a further period of leave until 31 May 2014. On 22 May 2014 he applied for further leave which was refused and his appeal dismissed in February 2017. He applied for leave to remain on Article 8 grounds on 21 February 2017. Any opportunity to gain employment does not alter the nature of his private life, which has been precarious throughout his residence in the UK. The Appellant could not satisfy the Immigration Rules and there were no exceptional circumstances.

13. The injustice referred to by Mr Karim does not enhance the Appellant's private life in any way. It may reduce the weight to be attached to the public interest. However, little weight should be attached to the Appellant's private life on a proper application of Section 117B because his residence in the UK has been precarious throughout. There was no error of law in the balancing exercise because the refusal of leave to remain on the facts of this case was proportionate.

14. The submission that the Appellant should be granted a period of leave in order to make a fresh application on the basis that he has was not dishonest does not engage Article 8. It is not appropriate to use Article 8 as a vehicle for remaining in the UK in order to make further applications.

15. I find that, on the facts before the First-tier Tribunal, the refusal of leave to remain was proportionate. Any private life which the Appellant would have been able to rely on had he not been accused of dishonesty was insufficient to outweigh the public interest in maintaining immigration control because the Appellant could not satisfy the Article 8 provisions of the Rules and there were no exceptional circumstances which would warrant a grant of leave outside the Rules.

16. The wrongful allegation of dishonesty was not an exceptional circumstance. It did not enhance the Appellant's private life and did not reduce the weight to be attached to the public interest to the extent that the Appellant's private life was capable of outweighing the public interest. I find that there was no material error of law in the decision of the First-tier Tribunal and I dismiss the Appellant's appeal.

<u>Notice of Decision</u>

The appeal is dismissed

No anonymity direction is made.

J Frances

Signed Date: 14 October 2019
Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed Date: 14 October 2019
Upper Tribunal Judge Frances