



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/24026/2013

THE IMMIGRATION ACTS

Heard at Field House
23 February 2015

Promulgated on
On 16 March 2015

Before

UPPER TRIBUNAL JUDGE LATTEER

Between

TAREQ ALIM

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal on both immigration and human rights grounds against the respondent's decision dated 3 June 2013 refusing to vary his leave to remain and to make removal directions.

Background

2. The appellant is a citizen of Bangladesh born on 15 June 1982. He entered the UK on 14 September 2009 with entry clearance as tier 4 general student valid until 13 April

2013. On 11 April 2013 he applied for leave to remain as the spouse of a British citizen, his sponsor. However, the respondent was not satisfied that the appellant could meet the income requirements as set out in E-LTRP3.1. He and his spouse provided their P60 certificate which stated they had jointly earned £5,490.93 in their current employment but it failed to provide any evidence of further earnings from any previous employment and the respondent was not satisfied that they earned the specified gross annual income of at least £18,600. The respondent went to consider the provisions of para EX.1 but found there was no adequate evidence to show that there were no insurmountable obstacles to family life with his partner continuing outside the UK. The applicant was also not able to meet the requirements of para 276 ADE of HC395 and accordingly the application was refused.

3. The appellant appealed against this decision arguing in substance that he was able to meet the requirements of the rules and that under article 8 it would be disproportionate to expect his partner to go elsewhere to continue her family life. The grounds refer to R (Nagre) v Secretary of State [2013] EWHC 720 (Admin) as authority for the proposition that there had to be a consideration of article 8 and that the new rules were merely a starting point. Further, it was argued that the sponsor and appellant had been working and had sufficient income from their employment and that the respondent's doubts about the availability of adequate maintenance were unreasonable.

The Hearing Before the First-tier Tribunal

4. At the hearing of his appeal the appellant appeared in person but his representatives had provided in advance of the hearing witness statements from him and his wife together with some supporting financial documents. The judge recorded that the appellant also attended with other documents belonging to himself and his wife. He then commented that unfortunately the documentation produced did not provide the necessary financial evidence relating to his gross annual income or their combined gross annual income as at the date of the respondent's decision nor did the receipts tie together with the P60s provided. The judge accepted that the appellant's income had improved but that was not in contemplation at the date of the respondent's decision.
5. The appeal had been supported by a skeleton argument provided by the solicitors which indicated that at the date of the respondent's decision, the appellant was unable to meet the £18,600 requirement but the argument was directed to the case of MA (2013) EWHC 190 (Admin) which had challenged the *vires* of the financial provisions. It was in substance being submitted, so the judge commented, that in the light of post decision evidence there was evidence to show that the appellant did meet at the relevant time the requirements under the rules. The judge found that that submission was ill founded in law and that the correct course would be for the appellant and his wife to submit further representations in support of an application to show they could now meet the requirements of the rules.
6. The judge went on to say:
 - "9. No appeal was actually pursued in relation to the article 8 ECHR grounds at the hearing and for my own part it did not seem to me that if the appellant could succeed

under the rules that there were any particular circumstances in the light of MF (Nigeria) 2013 [EWCA Civ 1192] and Nagre [2013] EWHC 720 to show any particular circumstances which were not covered by the rules.

10. It is also as I have concluded the claim could not succeed under the Rules in relation to the appellant's private life.

11. The appeal is dismissed on immigration grounds.

12. An appeal on article 8 ECHR grounds, if pursued, is so unparticularised and without evidence that it is not possible to know what is the claimed private life or the effect of any interference. Accordingly I do not find article 8 (1) right engaged. The appeal on article 8 ECHR grounds is dismissed."

Grounds of Appeal

7. In the grounds of appeal the appellant argued that the judge had failed to consider all the facts and circumstances of his case: he had been in the UK since 2009 and established a private and family life under article 8. He had been fully integrated into the country and was involved in many social and community activities. He was a law abiding citizen who had never had any trouble with the police or any authority, had never relied on public funds and did not want to take such benefit in the future. He was self reliant and wanted to contribute to the welfare of this society. His wife and many other family and relatives were present and settled in the UK and he fully depended on them. He argued that the judge had failed properly to consider his human rights under article 8.
8. Permission to appeal was granted by the First-tier Tribunal on the basis that it was arguable that the judge had failed adequately to consider the appellant's human rights under article 8 and that that failure amounted to an arguable error of law.
9. At the hearing before me the appellant through an interpreter explained that he had been in the UK for a long time. He had lots of relatives and friends here. After he got married his close relations with his own relatives in this country continued. He also had lots of friends here. He had paid his tax when working. He explained that he was involved in activities working generally for the betterment of the community. He felt that he now had nothing in his home country. He was self reliant; he did not claim benefits and had no plans to do so. He explained that he wanted to contribute to the welfare of this country and had now absorbed its culture.
10. He accepted that his wife had originally come from Bangladesh but she was now a British citizen having been naturalized. He had lived in Bangladesh until 2009. He accepted that he still had relatives there but since he had married he had less contact with them.
11. Mr Avery submitted that the judge had not erred in law in any way affecting the outcome of his decision when considering article 8. The general submission being made by the appellant was that his article 8 rights had not been taken into account. However, they had to be assessed in the light of the provisions of the rules and the appellant had failed to show that he could meet those requirements when he had made his application. Although further documents had been produced for this

appeal that did not affect the judge's findings and conclusions on the basis of the evidence before him.

Consideration of whether the First-tier Tribunal erred in law

12. Permission to appeal has been granted on article 8 grounds. The appellant's argument in essence is that proper consideration was not given to the factors set out in his evidence before the First-tier Tribunal and confirmed in the documentary evidence produced both then and for this appeal. The appellant has submitted a bundle of documents indexed and paginated 1-81. These confirm that he, having come to the UK as a student married his wife on 7 November 2012. It is clear from her passport that whilst she was born in Sylhet, she is now a British citizen. There is no reason to believe that this marriage is anything other than genuine and the respondent has proceeded on that basis.
13. The problem for the appellant so far as the immigration rules is concerned is that he was unable to meet the maintenance requirements as amended in 2012 in that he could not show an income of at least £18,600 or that there were insurmountable obstacles to family life with his partner continuing outside the UK. The judge was not satisfied on the evidence before him that the appellant could meet those requirements at the relevant time and the fact that the appellant, assuming this to be the case, has subsequently been able to meet them does not mean that the respondent or the judge erred in law in the decisions they reached.
14. The judge dealt briefly with article 8 commenting that in so far as there was an appeal on article 8 grounds, it was unparticularised and lacking in evidence that it was not possible to know what the claimed private life was or the effect of any interference. However, it is not so much private life that the appellant was relying on as his family life arising from his marriage. He was also seeking to rely on the fact that he had a number of relatives present and settled in the UK, he had settled into society here and was involved in community activities. He also makes the point that he is self reliant, does not claim benefits and has been law abiding.
15. However, the approach to the assessment of a claim under article 8 based on private and family life has been significantly changed by the amendments to the immigration rules in July 2012. In Singh and Khalid v Secretary of State (2015) EWCA Civ 74 the Court of Appeal confirmed that these new rules contained express provision for such applications. It remained the case that an applicant may seek to rely on article 8 in a case falling outside the provisions of the rules but the intention was that the new rules would properly reflect its requirements in the generality of cases so it should only be exceptionally that an applicant would have a valid claim under article 8 falling outside their scope. The right course in any case where an applicant relies on his or her family life, so the Court held, was to proceed by considering first whether leave should be granted under the relevant provisions of the new rules and only if the answer is no to go on to consider article 8 in its "unvarnished" form.
16. The Court then referred to the line of cases including Izuazu (article 8- new rules) [2013] UKUT 45 and (Nagre) approving the approach in Nagre that there would be no need to conduct a full separate examination of article 8 outside the rules where in

the circumstances of a particular case all the issues had been addressed in the considerations under the rules [64].

17. In his judgment in Nagre Sales J had expressed the approach as follows:

“Nonetheless the new rules do provide better explicit coverage of the facts that are identified in case law as relevant to analysis of claims under article 8 than was formerly the position, so in many cases the main points in consideration to article 8 will be addressed by decision makers applying the new rules. It is only if, after doing that, there remains an arguable case there may be good grounds for granting leave to remain outside the rules by reference to article 8 that it would be necessary for article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the rules to require the grant of such leave.”
18. As I have already indicated this is a case where the appellant was not able to meet the requirements of the rules. Neither the Secretary of State nor the judge was satisfied that the maintenance requirements of the rules were met or that there was sufficient evidence to show that there were insurmountable obstacles to family life being continued abroad. The issues which the appellant raised in his submissions are not sufficiently compelling to raise a claim under article 8 outside the rules. It is of course to the appellant’s credit that he is self reliant and wishes to be part of and contribute to society in the UK. However, none of those factors take him outside the generality of cases determined in accordance with the rules to justify a separate assessment under article 8. The respondent’s decision letter considered private life based on the appellant’s length of residence in the UK but, the judge found he was unable to meet the provisions of para 276 ADE.
19. In summary, whilst the judge dealt briefly with article 8 the approach he followed was consistent not only with MF(Nigeria) and Nagre but has been confirmed by the Court of Appeal in Singh and Khalid. The judge dealt more than adequately with the article 8 appeal. I am therefore not satisfied that he erred in law.

Decision

20. The First-tier Tribunal did not err in law. It follows that the appeal must be dismissed and the decision of the First-tier Tribunal stands.

Signed

Date 4 March 2015

Upper Tribunal Judge Latter