Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23568/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 25 January 2016	**On 3 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

FAYCAL BENOTMANE
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Kerr of Counsel
For the Respondent: Mr Tarlow a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for leave to remain on the basis of his private and family life, and the decision requiring him to leave the United Kingdom, on 16 May 2014. His appeal against the refusal of that was dismissed by First-tier Tribunal Judge Malik ("the Judge") following a hearing on 1 July 2015.

The grant of permission

2. First-tier Tribunal Judge Astle granted permission to appeal (12 November 2015) on the grounds that it is arguable that the Judge;

   (1) misdirected himself in law by referring to the Immigration (European Economic Area) Regulations 2006 where they were not relied on,

   (2) made no specific reference to paragraph 276ADE of the Statement of Changes in Immigration Rules HC395 ("the rules"),

   (3) made no findings as to the length of his residency, and

   (4) made no findings as to whether there would be very significant obstacles to his re-integration into Algeria.

Appellant's position

3. Mr Kerr submitted in relation to [2 (1)] that by referring to the wrong regulations, this indicated a less than forensic approach to the case even though no further reference to them was made in the Judge's analysis of the evidence within his reasons and deliberations. The Judge should have considered paragraph 276ADE rather than just by reference to the rules introduced in July 2012 at [3] of the determination. The lack of findings referred to in [2 (3) and (4)] above should have been considered within the assessment of paragraph 276AED.

Respondent's position

4. The Judge mentioned but did not apply the wrong regulations. The appeal could not have succeeded under paragraph 276ADE as the appellant only came here in 2003 when he was 33 years old. The findings were adequate.

The Judge's findings

5. In the determination the Judge said;

   "[1] The Appellant … appeals against the decision … refusing him leave to remain in the United Kingdom under the Immigration (European Economic Area) Regulations 2006.

   [2] I have read this refusal notice carefully and have taken into account its text in assessing this case, paying specific attention to the justifications advanced for the negative decision appealed against.

   [3] I put on record that in considering the appeal I shall bear in mind the legal provisions of relevant paragraphs of the Immigration (European Economic Area) Regulations 2006 (as amended). They are detailed but I have borne every provision of these paragraphs in mind meticulously during the assessment of the Appellant's case. I am also taking into account the new changes in the Rules brought into force on 9 July 2012 which materially changed the application of Article 8 of the ECHR. The provisions of the Immigration Act 2014 are also taken into account.

...

[6] To make this Determination comprehensive, I have carefully read all of the documents in the bundle including the Statement of the Appellant and the representations from his friends etc. I also took into account the oral evidence of the Appellant who gave evidence with the help of his friend, Mr Moudjeb. However, bearing in mind the dictum of ex parte Gondolia [1991] Imm A.R. 519 ... which advises junior judges not to give reasons for every finding of fact and waste paper in detailing obvious reasons, it is the story told on behalf of the Appellant and I shall determine the admissibility of various assertions in my deliberations below.

...

[9] It is not incumbent upon me to isolate every single piece of evidence and indicate whether I have found it relevant to the issue. I am only obliged by the superior precedents to give "sufficient and adequate" reasons and I am not under a duty to refer to each and every piece of evidence and it therefore does not follow that because I have not referred to certain specific facts, they have not been taken into account.

[10] In this Determination I am confining my reasons to the dispositive aspects of the case ...

a) The Appellant has acknowledged that he is receiving NHS treatment and this cannot be continued in Algeria. Unfortunately the UK at this moment is going through a fiscal crisis and cannot afford to show a lot of compassion to people of other nationalities who are obviously in need.

b) Ms Turnbull in her submissions asked me to show compassion to the Appellant who is unlikely to be able to continue his treatment in Algeria.

c) The Appellant has all his key family in Algeria and, as he would appreciate, sadly his plight is not different (sic) other Algerian people with disabilities.

...

[14] ...The new Immigration Rules will reform the approach taken as a matter of public policy towards ECHR Article 8, the right to respect for family and private life in immigration cases ... The failure to meet the requirements of the rules will normally mean failure to establish an Article 8 claim.

[15] The evidence persuades me that this Appellant will not be able to receive the appropriate treatment in Algeria because that country is not so advanced. However the NHS in the UK is regarded to be under pressure. In this context the Respondent is refusing immigration status to persons who cannot afford advanced treatment in their own countries.

[15] I am fully conscious of the "legal requirements" stipulated by law. It is incumbent upon me to advert to the new Rules giving respect to the *animus legis* dictated by the supremacy of Parliament. The legitimate aim of "immigration control" cannot be forgotten. The Appellant is correctly asked by the Respondent to leave the UK which has a fiscal crisis itself.

Discussion

6. The heart of the Appellant's case as explained in his Solicitor's letter (22 December 2010) was that he came here illegally in 2003, worked under a false name, now sought to regularise his stay, feared the authorities in Algeria, and had made friends and put down roots. The subsequent Solicitor's letter (7 May 2014) added that he had a private and family life with his cousin and friends. He has a cleft palate and suffers from hearing loss. He is receiving treatment for his speech impediment and hearing loss, and restorative dentistry. He has intestinal complications. In his statement (23 June 2015) he added that he had left Algeria in 1999 and spent time in France, Germany, Switzerland and Sweden before coming here. His mother lives in Algeria and has Alzheimer's. His 3 sisters and brother live in Algeria and are all married. He had an operation in Algeria for his cleft palate in 1999 and almost died. He works as a comis chef. Various medical letters and documents regarding his employment were produced. None of these facts could be gleaned from Judge Malik's determination.

7. It is clear that having wrongly identified the Immigration (European Economic Area) Regulations 2006, the Judge ignored them. He said he would "bear in mind the legal provisions of relevant paragraphs" of those regulations. None of them were relevant and he did not apply the regulations. He has plainly adapted a different determination and not proof read it. In those circumstances, despite the lack of forensic analysis and shoddy work, there is no material error of law arising from the references to the Immigration (European Economic Area) Regulations 2006.

8. There is no merit in the argument that specific reference to paragraph 276ADE of the rules should have been made. The key is whether it was applied or could have applied. In this case, given the facts identified at [6] above, even taken at its highest, his appeal could not possibly have succeeded under paragraph 276ADE for all the following reasons.

9. The Appellant lived in Algeria until he was 33 which was 12 years before the hearing. The Judge did not have to find the precise length of time he had been here as it was on any account significantly less than 20 years.

10. The Appellant has immediate family in Algeria namely 4 married siblings, speaks the language, and has been well enough to work here for many years. His medical conditions fall so far short of the thresholds identified in cases such as N v UK (Application 26565/05) ECtHR Grand Chamber, J v Secretary of State for the Home Department [2005] EWCA Civ 629, GS (Article 3- health exceptionality) India [2011] UKUT 35 (IAC), GS (India) & others v Secretary of State for the Home Department [2015] EWCA Civ 40, and Akhalu (health claim: ECHR Article 8) [2013] UKUT 00400 (IAC), that, when combined with his extensive family there, his linguistic ability,

and his ability to work he could not possibly have succeeded in showing that there would be significant obstacles to his integration into Algeria let alone very significant obstacles.

11. In my judgement, despite the obvious glaring inadequacies in the judgement, the Appellant's claim was so weak, that the Judge's incompetence and lack of attention to detail did not draw him into a material error of law.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

I do not set aside the decision.

Signed:
Deputy Upper Tribunal Judge Saffer
31 January 2016