



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/25198/2014

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 1 February 2016**

**Decision and Reasons Promulgated
On 16 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MUHAMMAD MUBASHIR

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Rutherford counsel instructed by the Appellant

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.

3. The Appellant was born on 9 November 1991 and is a national of Pakistan.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Dickinson promulgated on 2 October 2015 which dismissed the Appellant's appeal against a decision to remove him from the UK following a reconsideration dated 25 November 2013 of an earlier refusal of an application dated 20 April 2012 for limited leave to remain. The refusal letter included a notice under section 120 of the Nationality Immigration and Asylum Act 2002.
5. The refusal letter dated 25 November 2013 considered the application by reference to paragraph 276ADE , 353B and Article 8.
 - The Respondent did not accept that the Appellant had lost all ties to Pakistan and therefore he could not meet the requirements of 276ADE(1) (vi)
 - The letter asserted that the Appellant had been in the UK unlawfully since the expiration of the last period of leave.
 - There were no exceptional circumstances to justify a grant of leave outside the Rules.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Dickinson ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
 - (a) Under the heading paragraph 276ADE the Judge found the Appellant had not lived in the UK for 20 years and was not under 18 so did not meet 276ADE(1) (iii) (iv) or (v).
 - (b) In the absence of any evidence to the contrary he did not find that the Appellant had lost all ties to Pakistan.
 - (c) He concluded that the Appellant did not meet the private life Rules.
 - (d) He was not satisfied that the Appellant would be 'unable to survive' to survive if relocated as he was a well educated young man.
 - (e) He did not accept that the Appellant was dependent on his family as he gave evidence that he was a 'completely independent person.'
 - (f) There was a network of family relatives living in Pakistan who could provide support as he had grandparents and maternal aunts and an uncle.

7. Grounds of appeal were lodged arguing:
 - (a) The Judge failed to consider the Appellants statement of additional grounds that he could meet the requirements of paragraph 276B of the Rules which he had submitted in response to the one stop notice.
 - (b) The consideration of paragraph 276ADE was inadequate as there was no consideration of what ties the Appellant had to Pakistan.
 - (c) The Judge applied the wrong test in Article 8 suggesting he was not satisfied that the Appellant 'would be unable to survive'.
 - (d) The consideration of whether the Appellant had a family life was inadequate given that he had only ever lived with his family.

8. On 13 March 2015 Upper Tribunal Judge Kestic gave permission to appeal.

9. At the hearing I heard submissions from Ms Rutherford on behalf of the Appellant that :
 - (a) She did not accept that the permission granted was limited to arguments about paragraph 276ADE and Article 8 as there was evidence that the Appellant had been in the UK lawfully since 2004. She submitted that although at the date of hearing on 17 September 2014 the Appellant had not been in the UK lawfully for 10 years the Respondents Guidance (at page 97 of the Consolidated bundle) allowed the Respondent to grant an application where it was received 28 days or less before the applicant completed the qualifying period.
 - (b) The assessment under paragraph 276ADE(1) (vi) was wholly inadequate given that the Appellant came to the UK before his 13th birthday and at the time of the hearing was 22 years old. He had given evidence that he had never been back to Pakistan since he was 12 years old and therefore there should have been consideration of whether any ties he had were meaningful.
 - (c) In relation to Article 8 she argued that there was no adequate assessment of family life.
 - (d) The proportionality assessment was very brief and based on whether the Appellant could survive: that is the wrong test.

(e) There was no consideration of the public interest factors in section 117B of the Nationality Immigration and Asylum Act 2002.

10. On behalf of the Respondent Ms Johnstone submitted that :

(a) She relied on the Rule 24 notice.

(b) In relation to the 10 year route the Appellant would not have achieved 10 years lawful residence until 9 October 2014. The Guidance referred to allowed a discretion to the decision maker but this was not applicable to the Judge.

(c) The Judge's assessment under paragraph 276ADE was adequate. There is no template .

(d) In relation to Article 8 the findings were adequate. The Judge identified the key factors : that the Appellant was an educated, independent adult and while relocation might cause hardship the Appellant could establish himself and work in Pakistan.

(e) Section 117B was not a checklist leading to a grant of leave.

Legal Framework

11. In relation to paragraph 276ADE I have considered Bossadi (paragraph 276ADE; suitability; ties) [2015] UKUT 42 (IAC) held that the requirement set out in paragraph 276ADE (vi) (in force from 9 July 2012 to 27 July 2014) to show that a person "is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK", requires a rounded assessment as to whether a person's familial ties could result in support. In Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 (IAC) the Tribunal said that the natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules (HC194) imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a

country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances

Finding on Material Error

12. Having heard those submissions, I reached the conclusion that the Tribunal made material errors of law.

13. In relation to the first ground argued, that the Judge failed to consider paragraph 276B I note that Upper Tribunal Judge Kekic stated that this had no merit. I am satisfied that even if she had not intended to limit the grant of permission the ground did indeed have no merit. Given that the Appellants case was that he arrived in the UK on 9 October 2004 he would not have been in the UK for 10 years until 9 October 2014 after the date of the hearing before Judge Dickinson. While I note that there is a discretion available to caseworkers in allowing an application submitted 28 days early there was nothing before the Judge or before me to suggest that such a discretion was available to the Judge.

14. In relation to the assessment under paragraph 276ADE there are no findings independently made by the Judge. He has merely repeated the paragraph in the refusal letter (page 2 of the refusal letter) which simply asserts that having lived until he was 13 in Pakistan it was not accepted that he had lost all ties to the country. I note what was said in Ogundimu and given the substantial bundle submitted by the Appellant and that other family members gave evidence which was not referred to I am satisfied that there has been no rounded assessment of all of the relevant circumstances or indeed consideration of the social, cultural and family circumstances.

15. The failure of the First-tier Tribunal to address and determine whether the Appellant had lost all ties to Pakistan constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.

16. I am also satisfied that the consideration of Article 8 is there is no adequate assessment of the whether this is a family or private life appeal for the purpose of

Article 8(1). The assessment is also apparently underpinned by the application of the wrong test, whether the Appellant 'will be able to survive'.

17. I therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety. All matters to be redetermined afresh.

18. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

19. In this case I have determined that the case should be remitted because the Appellant did not have a fair hearing due to the failure to make adequate findings either in relation to the Rules or Article 8. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

20. I consequently remit the matter back to the First-tier Tribunal sitting at Manchester to be heard on a date to be fixed before any First-tier Immigration judge other than Judge Dickinson.

Signed

Date 8.2.2016

Deputy Upper Tribunal Judge Birrell