



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/24388/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 6<sup>th</sup> October 2017**

**Promulgated**

**On 21<sup>st</sup> November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR ADEEL AHMAD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: The appellant appeared in person

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant's appeal against a decision to refuse his human rights claim was dismissed by First-tier Tribunal Judge Beach ("the judge") in a decision promulgated on 19<sup>th</sup> December 2016. The judge found that the appellant would not face very significant obstacles in reintegrating into Pakistan on return. He could not meet the requirements of the Immigration Rules ("the rules") in paragraph 276ADE. She went on to find, having taken into account section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), that the decision to refuse the human rights claim and the appellant's removal in consequence of that decision amounted to a proportionate response. She also found that the appellant had not put

forward any compelling reasons why he should be permitted to remain in the United Kingdom outside the rules.

2. At the appellant's request, contained in a letter to the Tribunal dated 15<sup>th</sup> September 2016, the judge decided the appeal on the basis of the documentary evidence before her.
3. The appellant applied for permission to appeal, contending that he had established private and family life ties in the United Kingdom and that the judge's decision went against the weight of the evidence. The Secretary of State's refusal of the human rights claim breached his Article 8 rights. Permission to appeal was granted by a First-tier Tribunal Judge, who found that the judge may have erred in not proceeding to make an Article 8 assessment outside the rules.
4. In a rule 24 response from the Secretary of State dated 25<sup>th</sup> August 2017, the appeal was opposed. The application for permission to appeal was misconceived as the Secretary of State's decision, refusing the human rights claim, included a certificate made under section 94(1) of the 2002 Act. The appellant had only an out of country right of appeal and so the First-tier Tribunal Judge had no jurisdiction to hear the matter. In any event, the appellant's grounds identified no material error of law. The judge had before her no substantial evidence of any private life ties and the appellant's immigration status was precarious. In the light of Nasim and Others [2014] UKUT 00025, the judge's overall decision to dismiss the appeal was clearly correct.

### **The Hearing**

5. Mr Ahmad appeared in person, without a representative. I explained the procedure to be followed and he confirmed that he understood that he would have an opportunity to explain his case that the judge had made an error of law, such that her decision should be set aside and remade. He would also have an opportunity to respond to the Secretary of State's case that the judge had no jurisdiction to hear the appeal, in the light of the certificate.
6. Mr Ahmad said that he had spent the most important part of his life in the United Kingdom. He arrived when he was 21 years old, with entry clearance as a student, in December 2009. He received further leave as a student and then leave in a post-study category, finally applying in November 2014 for leave to remain on the basis of his private life. He had experience here and it would be hard for him to return to Pakistan as he would have to start "from zero". He had few resources.
7. Mr Ahmad said that he had trained people in the United Kingdom and had members of his family and friends here. He was not a burden to anyone and had paid taxes. He was more comfortable in this country and would be insecure in Pakistan.

8. The judge presumed that Mr Ahmad's parents and siblings in Pakistan would help him out but that would not be possible. There was insecurity in his home country and he was helping his family out financially. He knew what he was doing in the United Kingdom. He had spent a lot of time here and it would not be easy for him to integrate into Pakistani society, on return.
9. Mr Ahmad referred to a short bundle sent to the Upper Tribunal two days before the hearing. This included a witness statement. In it, he referred to investing time, money and energy in gaining his education and in working in the United Kingdom. His mother's sister lives here with her children and grandchildren and he is attached to his cousins. Mr Ahmad said that he lives with one of them and with an aunt. They are a close family. If he had to leave, this would interfere with his life in this country.
10. In submissions, Mr Walker said that the Secretary of State relied on the rule 24 response. Refusal of the human rights claim allowed only an out of country appeal in the light of section 94(1) of the 2002 Act. In any event, paragraph 13 of the decision showed that the judge had made a finding which was open to her. The appellant had provided no details of ties to the United Kingdom. The judge accepted that he may have established some form of private life given the length of time spent here but this could not outweigh the public interest. The judge's conclusion that there was no reason to make an Article 8 assessment outside the rules, in the light of the appellant's limited private life ties, was open to her. The appellant's recent witness statement referred to family life with an aunt and cousins. The judge made her decision based on the limited evidence before the First-tier Tribunal.
11. Mr Ahmad said that he had nothing to add.

### **Findings and Conclusions on Error of Law**

12. In written submissions contained in Mr Ahmad's short bundle, it is contended that the application he made in November 2014 has the effect of preserving rights of appeal available before amendment of the 2002 Act by the Immigration Act 2014. I rather doubt that this is correct. The Secretary of State's decision is to refuse a human rights claim made by him, after he varied his original application. The date of decision is June 2015 and so it would appear that only limited grounds of appeal are available to Mr Ahmad. That makes no material difference, however, as he has sought to rely on his human rights, a ground of appeal available to him whether or not the decision falls within the regime introduced by the Immigration Act 2014.
13. In any event, there is a fundamental problem. The Secretary of State's decision includes, towards the very end of the decision letter, a certificate under section 94(1) of the 2002 Act. A certificate is available in a case where the Secretary of State finds that a human rights claim is clearly unfounded. The effect of the certificate is that the appellant must bring

his appeal from outside the United Kingdom. There has been no challenge to the certificate.

14. In the light of the certificate, the First-tier Tribunal Judge had no jurisdiction to decide the appeal. Her decision to proceed amounts to a material error of law, such that the decision must be set aside and remade. Were it necessary to do so, I would find in the light of the evidence before the judge that the ties established by Mr Ahmad since he arrived as a student in December 2009 are relatively insubstantial and have developed while he has had precarious immigration status. If she were properly able to proceed, she would have been entitled to conclude that those ties did not outweigh the public interest.
15. Remaking the decision is straightforward. In the light of guidance given by the Court of Appeal in Virk [2013] EWCA Civ 652, which was also a case in which the First-tier Tribunal had no jurisdiction, the correct course is to remake the decision and then dismiss it.

**Notice of Decision**

The First-tier Tribunal Judge made a material error of law. The decision must be remade. It is remade as follows: appeal dismissed.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Deputy Upper Tribunal Judge R C Campbell

**Anonymity**

There has been no application for anonymity. The First-tier Tribunal Judge made no order or direction. I too make no order or direction on this occasion.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Deputy Upper Tribunal Judge R C Campbell

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

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

Signed \_\_\_\_\_ Date \_\_\_\_\_

Deputy Upper Tribunal Judge RC Campbell