

Dineen on 11 January 2017 but subsequently leave was granted , stating that it was arguable that although the First-tier Tribunal's decision did not contain any errors of law in respect of the Immigration Rules but that the Judge may have material erred by not giving sufficient reasons for finding that the appellant was not entitled to further leave to remain in the United Kingdom under Article 8 of the European Convention on Human Rights.

First-tier Tribunal judge's decision

3. The Judge in his determination stated the following which I summarise. The appellant was a most unsatisfactory witness who came to this country in 2010 to be a student and in his own words was looking for an education and work so that he could eventually settle in the United Kingdom. His immigration history is consistent with those intentions. Ultimately, when that course of action was no longer possible and he was facing removal from this country, he decided to claim asylum. This fatally undermines his credibility.
4. The core factor of the appellant's account is that he had a relationship with his cousin and got her pregnant. It was not accepted that he is of any interest to his cousin's brother's, his father gang of the Pakistani authorities. The appellant did not claim asylum when he arrived in this country in May 2010. The appellant has never been a genuine asylum seeker or a person at risk and he can safely return to Pakistan. If he cannot live in his home area then he can live elsewhere in that country and can go to the police for protection if needs be.
5. In respect of Article 8 of the European Convention on Human Rights the Judge found that the respondent's decision cannot be impugned in any way and there is no justification whatsoever to consider his Article 8 claim outside the Immigration Rules. The decision did not disproportionately interfere with his private life and was justified in the public interest for the purposes of maintaining effective immigration control.

The grounds of appeal

6. The appellant in his grounds of appeal stated the following which I summarise. The consideration of Article 8 is notably brief and the appellant also continues to rely on this ground of appeal. It was imperative for the first-tier Judge to conduct a fair and realistic balance of the factors in favour of the appellant against the public interest.

7. There is a lack of evidence in the decision that the first-tier Judge has taken this approach. If the judge had attached relevant weight to deserving factors, including the appellant's length of residence in the United Kingdom and ties established over the years and then weighed the same cumulatively against the respondent's decision then the facts of this case might have called for a different result in favour of the appellant.

Rule 24 response

8. The respondent in her Rule 24 response stated the following, in summary. The respondent opposes the appellant's appeal and submits that the Judge directed himself appropriately. It is noted that the grant of permission only gives permission to consider Article 8. The Judge found at paragraph 23 that the appellant was a "most unsatisfactory witness" and that his intention was to study, work and then settle in the United Kingdom. Also, the judge found that the appellant's evidence to be most unsatisfactory when he was speaking about his living arrangements in this country with Tahir Mehmood. It is submitted that given the findings on the appellant's inconsistent evidence both concerning the events in Pakistan and the circumstances in the United Kingdom, the appellant's appeal could not succeed under Article 8.

The hearing

9. At the hearing, Ms Mahmood in submitted that the first-tier Tribunal Judge did not go through the five step stages of Razgar in his evaluation of Article 8.
10. Mr Singh on behalf of the respondent relied on the respondent's rule 24 notice and stated that the judge has clearly considered the appellant's Article 8 claim although he has not set it out under a clear heading in his decision. I was referred to paragraph 22 of the decision where the Judge took into account that a claim under Article has been made on the basis of the appellant's length of residence in the United Kingdom. He said that at page 23 the Judge set out his evaluation of Article 8 and took into account the extent of the appellant's private life and has made no error of law.
11. In reply I asked Ms Mahmud exactly what private life is the appellant relying upon which she says that the Judge did not consider. She said that there is no further evidence about the appellant's private life. She said that the Judge had not considered his private life with his friend who has been supporting him in this country and with whom he lives.

Discussion and decision as to whether there is an error of law

12. I have considered the first-tier Tribunal Judge's determination with care. Permission was granted only in respect of the Judge's lack of consideration of the appellant's right to a private life in the United Kingdom under Article 8 of the European Convention on Human Rights. Otherwise, I concur with the decision of both First-tier Tribunal Judge Dineen and the Upper Tribunal Judge that there is no material error made by the Judge in his consideration of the Immigration Rules which I find is flawless.
13. In respect of his consideration of his Article 8 of the European Convention on Human Rights, the Judge found that the appellant was not a credible witness, his account was not credible and his intention always has been to live in the United Kingdom and this is corroborated by his long immigration history where the appellant only claimed asylum after a decision was made to remove him from this country, only to make an asylum claim which was found not to be credible. The respondent's removal decision had to be cancelled due to his asylum claim which was made at the very last minute to thwart removal.
14. In light of these findings, it is difficult to understand the appellant's submissions that had the Judge considered the proportionality assessment, he could have succeeded under Article 8. One of the considerations which the appellant claims was not considered by the Judge was the length of his residence in this country and the ties that he has established over the years which weighed cumulatively his case might have called for a different decision in favour of the appellant.
15. I cannot see under which circumstances the appellant would succeed under Article 8 given the facts of this case and the findings made by the First-tier Tribunal Judge when he cannot succeed under the Immigration Rules. At the hearing, I asked the appellant's counsel what evidence does the appellant claim that the Judge did not consider, in respect of his private life, which would amount to exceptional circumstances. She said that the Judge did not consider the appellant has been in this country since 2007 and added that he has a friend in this country who has been supporting him and with whom he lives.
16. The judge did consider at paragraph 22 the appellant's evidence that he has been in this country since 2007 and has developed a private life in this country. There was nothing further for the Judge to consider. Furthermore, the fact that the

appellant has a friend in this country does not engage Article 8 rights given that this friend did not even attend the hearing to support the appellant's appeal. The Judge cannot be faulted for not considering evidence which was not before him.

17. Even at if the First-tier Tribunal Judge was brief in his reasoning is, it is evident that he considered all the evidence and found that the appellant could not succeed under Article 8 which he was entitled to do on the facts of this case.
18. The Judge in a long and careful decision set out all the appellants evidence which demonstrates he decided based on all the evidence before him. The Judge found the respondent's decision "did not disproportionately interfere with his private life and was justified in the public interest for the purposes of maintaining effective immigration control".
19. Given the Judge's finding that the appellant is not credible and has made a false asylum claim in the last desperate bid to remain in this country, the respondent's interest in maintaining a fair, orderly and effective immigration control would trump any rights that the appellant claims to have under Article 8 in respect of his private life which includes a friend he has in this country.
20. I am also of the view that the appellant's case was not one requiring the general proportionality assessment wholly outside the scope of the United Kingdom immigration legislation because there were no compelling circumstances identified in this case with the appellant should be granted leave to remain under Article 8 when he cannot meet the requirements of the Immigration Rules especially taking into account the wider public interest.
21. There is no material error of law in the decision of the First-tier Judge in respect of the Immigration Rules and Article 8 of the European Convention on Human Rights.

Appeal dismissed

Signed by
2017

Date this 2nd day of May

A Deputy Judge of the Upper Tribunal
Mrs S Chana

