



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00962/2013

THE IMMIGRATION ACTS

Heard at Field House

On 27 June 2013

Prepared on 12 July 2013

Determination

Promulgated

On 19 July 2013

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

BEKHIM HOTI

Appellant

Respondent

Representation:

For the Appellant (Secretary of State): Mr C Avery, Home Office Presenting Officer

For the Respondent (Mr Hoti): Mr M Saleem, Solicitor, of Malik & Malik Solicitors

DETERMINATION AND REASONS

1. This is the Secretary of State's appeal against a determination of First-tier Tribunal Judge Owens. For ease of reference, I shall refer to Mr Hoti, who was the original appellant, as "the claimant" and to the Secretary of State, who was the original respondent, as "the Secretary of State".
2. The claimant, who was born on 12 October 1969, is a citizen of Kosovo. His immigration history is set out in the determination of Judge Owens being appealed against and is as follows. He arrived in the UK on 28 November 1997. He was subsequently removed to Germany on 19 November 1998 under the Dublin Agreement and returned to Kosovo for a short period before returning to the UK on 4 July 1999. He claimed asylum at port on the same day.
3. Subsequently, the claimant submitted a "legacy application" on 5 February 2008. Then, following various letters before action, the last of which was on 4 October 2011, the claimant lodged an application for judicial review in respect of the delay in processing his legacy application in November 2011. As a result of these proceedings, the Secretary of State agreed to make a decision in respect of the claimant. He was interviewed in respect of his claim for asylum but this claim was rejected on 16 January 2013. The Secretary of State also on that date refused the claimant leave to enter the UK, thereby generating a right of appeal.
4. The claimant appealed against this decision and his appeal was heard before First-tier Tribunal Judge Owens, sitting at Hatton Cross on 16 April 2013. At the outset of the hearing the claimant's representative confirmed that the claimant would not be pursuing his appeal on asylum or humanitarian protection grounds and nor would he be seeking to argue that it would be a breach of Articles 2 or 3 of the ECHR to remove him to Kosovo. As recorded by Judge Owens at paragraph 7 of his determination, the issue before the Tribunal was whether the claimant should be granted leave in accordance with Rule 276ADE(iv) of the Immigration Rules or whether his removal as a result of the decision under appeal would be in breach of his protected rights under Article 8. Although Judge Owens has made reference to paragraph 276ADE(iv) of the Rules, it is clear from the determination that this is a typographical error and that the relevant subparagraph which he was considering was paragraph 276ADE (vi).
5. Judge Owens allowed the claimant's appeal both under the Immigration Rules and also under Articles 3 and 8 of the ECHR, although it appears from the determination as a whole that the reference to paragraph 3 must also have been a mistake.
6. The Secretary of State now appeals against this decision, with leave.
7. Before me, on behalf of the Secretary of State, Mr Avery accepted that there were a number of complications in this appeal. The first was that part of the basis of the grounds was that the refusal letter, contrary to what Judge Owens found, had dealt with the issue of the legacy policy, whereas in fact the refusal letter which was before the judge had not. On

investigation, Mr Avery had discovered that there were in fact two refusal letters, one of which had dealt with the legacy policy but the other, the one which had been before the judge, had not. It was clear that the Presenting Officer had had the one in which the reference was made while the judge had had the other one. Mr Avery was not able to say which of the refusal letters was actually served on the claimant.

8. A more serious difficulty was that it was accepted that at paragraph 45 of his determination, Judge Owens had given his reasons for allowing the appeal under the Rules. This part of the decision had not been appealed.

Discussion

9. I set out the relevant parts of paragraphs 44 and 45 of Judge Owens' determination as follows:

"Immigration Rule 276ADE

44. I turn to Immigration Rule 276ADE. It is accepted by both parties that the [claimant] cannot satisfy the requirements of 276ADE(iii) since he has not resided here for twenty years. I have considered whether the [claimant] meets the requirements of 276ADE(vi). I find that the [claimant] has been living in the UK for almost fourteen years. I accept his evidence that he left Kosovo in 1993 when he was 24 years old as a result of the war in the region and that he only returned there briefly for a period in 1997. He is now 43 years old. I accept that he has no family in Kosovo. I find that he is not in contact with anyone in Kosovo and after such a long period away from his country at a time when the region went through so much upheaval, I accept that he does not have friends or contacts there. I find that he has not [got] property there.
 45. I also give weight to the fact that his brother, even though he had had indefinite leave to remain in the UK since 2010 had not returned to Kosovo and that he has changed his name to Steven MacClarence which indicates his integration into British society. The [claimant] similarly is integrated into British society. The [claimant] speaks fluent English. His friends are from a variety of nationalities. He does speak his native language, however, this is likely to be the case for anyone who was born and brought up in another country. However on all balance, having considered his individual circumstances I accept that he does not have any social, cultural or family ties to Kosovo. I find that he meets the requirement of Rule 276ADE(iv) of the Immigration Rules."
10. As indicated above, the reference to paragraph 276ADE(iv) in paragraph 45 should be to paragraph 276ADE(vi) as it was in paragraph 44. It is apparent that this is the sub-paragraph which Judge Owens was considering.

11. The provisions of paragraph 276ADE(vi) are as follows:

“Requirements to be met by an applicant for leave to remain on the grounds of private life

276ADE. The requirements to be met by an applicant for leave to remain on the grounds of private life. in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of [various grounds are set out which do not apply to this claimant]; and
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and ... [one of] ...
- (vi) is aged 18 years or above, has lived continuously in the UK for less than twenty 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.”

12. As accepted on behalf of the Secretary of State, Judge Owens made a finding that this claimant was entitled to succeed under paragraph 276ADE(vi) and this finding has not been appealed. It follows, in my judgment, that any errors of law in Judge Owens’ determination cannot be material, as there has been no challenge to the decision allowing the claimant’s appeal under the Immigration Rules.

13. The Secretary of State’s appeal is accordingly dismissed.

Decision

14. There being no material error of law in the determination of First-tier Tribunal Judge Owens, the Secretary of State's appeal is dismissed.

Signed:

Date: 17 July 2013

Upper Tribunal Judge Craig