Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/07305/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 3rd September 2013	**On 9th September 2013**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR SHEIKH MOHAMED JAMEEL
(ANONYMITY ORDER NOT MADE)

Claimant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Kirk (Instructed by Shah Law Chambers)
For the Respondent: Mr T Wilding (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant against a determination of the First-tier Tribunal (Judge Jhirad) promulgated on 3rd July 2013 by which she dismissed the Appellant's appeal against the Secretary of State's decision to refuse him leave to remain on the basis of his long residence in the UK.

The application was made on 7th July 2012 and thus was made under the old 14 year Rule that was deleted on 9th July 2012.

2. The grounds seeking permission to appeal argue firstly that the Judge ought to have granted the Appellant's application for an adjournment when the Secretary of State's representative adduced at the hearing a covering letter purporting to serve the IS151A Notice so that the representatives could make a subject access request in relation to the Home Office file to investigate further whether and to what extent the Respondent had made efforts to serve the Notice.

3. Secondly it is asserted that the Judge erred in giving insufficient consideration to the Appellant's evidence of not having been served with the IS151A Notice which "stopped the clock" for the purposes of the Rule.

4. Thirdly the Judge is said to have erred in her consideration of Article 8. She did not follow the guidance of Razgar [2004] UKHL 27 and made no finding of whether there was any interference in the Appellant's private life or as to whether any interference was sufficiently grave as to engage Article 8. Further the Judge is said to have given inadequate reasons for dismissing the appeal on Article 8 grounds.

5. I confess to being puzzled by grounds 1 and 2 as drafted by Mr Kirk. He represented the Appellant also before the First-tier Tribunal. It is clear from the Home Office bundle for that hearing that the IS151A about which so much is made must have been served on the Appellant because he appealed against that decision. Mr Wilding was able to produce the Adjudicator's determination in regard to that hearing. While that may have taken Mr Kirk by surprise (although the bundle should have warned him) it certainly cannot have taken the Appellant by surprise as it was he who appealed and indeed sought an onward appeal to the IAT when he lost in 2000. The Appellant was quite simply lying when he claimed ignorance of the IS151A in September 2000. It is unclear how this evidence was not brought to the attention of the First-tier Tribunal. However it does mean that the Appellant could not possibly succeed under the Immigration Rules whether or not the First-tier Tribunal Judge's reasoning was flawed.

6. So far as Article 8 is concerned I disagree with Mr Kirk that the Judge erred in not following Razgar. There is nothing to be gained, nor indeed any requirement to mechanistically go through the five steps set out in Razgar if the case is clearly about proportionality. In this case it was. There was no credible family life but clearly a private life; the Appellant having been in the UK since 2000. The Judge, while not expressly saying that the Appellant had a private life that would be interfered with if he were removed, clearly proceeded on that basis as she gives reasons why removal would be proportionate.

7. It was argued on the Appellant's behalf that if the Judge had approached Article 8 properly she would have found in the Appellant's favour as he has been in the UK for 14 years and the Secretary of State has a policy of allowing such people to stay as evidenced by the Immigration Rules and furthermore no attempt had been made to

remove him which is a clear indication of the Secretary of State's view as to the interests of immigration policy in his removal. That is an unattractive argument. The Secretary of State has no policy that benefits this Appellant. The Immigration Rule, now deleted allowed those who had not come to the attention of the authorities for 14 years to remain. That does not apply to this Appellant and the fact that he has not been removed is not a factor in his favour. The fact is he made an unwarranted asylum claim in 2000 which he lost. He knew that he was required to leave the UK and yet he did not do so. We do not know if any efforts were made by the Secretary of State to seek him out and remove him but that does not exonerate him from blame – he should have left. Furthermore as has now made clear he has lied to the Tribunal about what took place in 2000.

8. The Judge noted that he had no girlfriend in the UK, that he has family in Pakistan, that he left aged 35 and thus has spent most of his life there. He has acquired skills in the UK that will stand him in good stead in Pakistan and Pakistan is the country of his nationality, heritage and culture. The Judge noted that there was no evidence that he would be homeless or destitute in Pakistan. Without spelling it out the Judge clearly found that returning him was not a disproportionate breach of his private life.

9. Given that the Appellant came to the UK, lodged an unmeritorious asylum claim, remained knowing he should leave and then lied to the Tribunal, even had the Judge erred in her approach to Article 8 I would not set aside the determination as there is no prospect of any Judge finding any differently.

10. The determination of the First-tier Tribunal Judge contains no error of law that would warrant it being set aside.

11. The appeal to the Upper Tribunal is dismissed.

Signed Date 5th September 2013

Upper Tribunal Judge Martin