



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

Appeal Number: IA/39344/2013

THE IMMIGRATION ACTS

Heard at Field House

On 25 July 2014

Determination

Promulgated

On 05th Aug 2014

Before

UPPER TRIBUNAL JUDGE PINKERTON

Between

**MR ABDUL QAVI CHAUDHARY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Robinson

For the Respondent: Mr L Tarlow

DETERMINATION AND REASONS

1. The appellant is a Pakistani national who appealed the decision of the respondent to refuse to grant him leave to remain in the United Kingdom on human rights grounds.

2. Following refusal the appellant appealed to the First-tier Tribunal. In a determination promulgated on 9 April 2014 First-tier Tribunal Judge Randall dismissed the appellant's appeal. In fact that is not entirely correct because initially the appeal was said to have been dismissed under the Immigration Rules re: long residence but the appeal allowed in respect of Article 8. An amending determination under the "Slip Rule" was subsequently promulgated and this made clear that the judge did and had always intended to dismiss the appeal under the Rules and on human rights grounds.
3. The appellant sought permission to appeal that decision. The judge granting permission found it arguable that having concluded that the appellant could not meet the "suitability requirements" for leave to remain under paragraph 276ADE of the Immigration Rules (because he has a criminal conviction) the Tribunal ought nevertheless to have considered the extent to which the appellant had social, cultural or family ties to his country of origin (it being his case that he has none) when considering the appellant's case under Article 8 ECHR. It was found further arguable that the Tribunal was wrong to contemplate the appellant's relocation to Spain in circumstances where it was the respondent's intention to remove him to Pakistan.
4. The respondent lodged a Rule 24 response. The response submitted that the judge's finding in respect of paragraph 276ADE is correct. The appellant cannot succeed under paragraph 5-LTR given that he had a prison sentence of eleven years. Even if the appellant could satisfy paragraph 276ADE both limbs of paragraph 276ADE i.e. 276(i) and (vi) would have to be satisfied.

The Judge's Findings

5. Summarising a little of the appellant's immigration history the appellant was granted leave to remain in the United Kingdom on the basis of his relationship with his wife (who is a dual Spanish and British national) following a successful appeal. It appears that the appellant is still married to her although they are separated. He has been in the UK for eighteen years. He resided with his spouse for almost eight years and they have a son whom the appellant visits in the holidays. The appellant has many friends in the UK and is fully engaged in the "British lifestyle". He is self-employed and has been working since 2006. He left Pakistan eighteen years ago and has no family there except his terminally ill mother. His father and brother passed away in 2012/2013 respectively.
6. As set out by the judge the appellant maintains that he would lose contact with his son, who lives in Spain with his mother, if he was removed from the UK as his son and wife would be unable to travel to Pakistan. They are unable to move there due to language, cultural and social barriers.
7. The judge refers to an appeal in 2006 against the decision to deport the appellant who was convicted in 2000 for conspiring to supply a Class A

drug for which he received a sentence of eleven years. The appellant succeeded in his appeal against the decision to deport him. The judge noted that since that successful appeal the appellant's wife and their son moved to Spain and thus his wife is no longer exercising treaty rights in this country and has embarked upon another relationship within which she has had a child.

8. The judge found that the relationship between the appellant and his son has been "somewhat exaggerated" and gave as reason for this that there was only one recent trip to the UK prior to the trip at the time of the appeal hearing and the appellant has never visited his son even when he had a residence permit. The judge found also that it remains uncertain that the appellant's relationship with his wife will ever be re-established and also that his wife exaggerated her fears as to the dangers of her son visiting or living in Pakistan.
9. The judge further found that there is family life between the appellant and his son and although contact between them has only recently re-started that nevertheless amounts to family life despite there having been difficulties in the past. The judge considered Section 55 of the Borders, Citizenship and Immigration Act 2009 (duty regarding the welfare of children) and at paragraph 32 of the determination sets out his findings as to the relationship between the appellant and his son. Although the appellant's son has plans to study in the United Kingdom the judge found that they are "no more than plans". It was not clear to the judge when or whether the appellant's son will ever come to the United Kingdom to live or to study and what age he would be if and when he did.

The error of Law Point

10. The appellant takes issue with the judge's conclusion that he was given no practical or legal reason why the appellant could not relocate to Spain, from Pakistan. Given that father and son both wish to develop their relationship and they communicate primarily by electronic means in any event the judge found that given the uncertainty as to whether the son would ever come to the UK to live or study it would be open to the appellant and the son to develop their relationship by the appellant moving to Spain via Pakistan, by making an application for a family permit to the Spanish authorities. He concluded "Thus, in considering the best interests of (the son)" it would be in his best interests to develop a relationship with his father, but this can best be done by them being together in Spain.
11. At paragraph 42 of the determination the judge comments that the case was presented to him as if the only way the family could enjoy their family and private life is for the appellant to be allowed to remain in the UK. The judge found that there is a lack of certainty as to whether the child and/or the appellant's wife would ever live in the UK. The little recent physical contact that the son has had with his father, and the absence of any suggestion as to the appellant's inability to obtain a family permit for

Spain from Pakistan led the judge to find that it is not only by the appellant remaining in the UK that the family would be able to enjoy its family and private life. The appellant could go to Spain and enjoy his family and private life there. The appellant's representative had submitted that it was in the child's best interests for his father to remain in the UK but the judge rejected that stating that he found that it would be in the child's best interests for his father to migrate to Spain.

12. In paragraph 45 of the determination the judge has this to say:-

"... The question is whether the Appellant has established family/private life in the UK which could be interfered with by the decision to remove. For the reasons set out above I find, on the balance of probabilities, that he has established his family/private life in the UK, in terms of his long residence and friendships here, and his relationship with his son, albeit that the latter is conducted mainly by electronic means. However I find that his removal to Pakistan will not interfere with the Appellant's family and private life because in the short term, electronic communication between the Appellant and his son can continue as now, and subsequently because the appellant can relocate to Spain with a family permit and enjoy his family and private life there. In those circumstances I find that the decision to remove will not interfere with the family and private lives of the parties. In the alternative, if there is any interference with the private and family life of the parties caused by a decision to remove, I find that it would be in accordance with the law, and that, for the reasons set out above, and particularly because of the option of going to Spain, it would not be disproportionate for the Appellant to be removed to Pakistan, in the particular circumstances of the case."

My Conclusions

13. It is clear enough from the paragraph above that the judge has found that the appellant enjoys family life with his son and his private life includes his friendships, work, etc. here. It is equally clear that the family life has only recently become more established, having at one time and for a long period been extremely tenuous, but that much of that family life is conducted by "electronic means". The judge concludes that the decision to remove will not interfere with the family and private lives of the parties by the appellant's removal to Pakistan. However in the alternative if there is such interference then it would be in accordance with the law.

14. The judge may or may not be correct in stating that the appellant has the option of going to Spain which leads him to conclude that it would not be disproportionate for the appellant to be removed to Pakistan. The judge does not deal with the scenario where the appellant is for whatever reason not able to move to Spain either to visit, on a temporary basis or more permanently but I am not persuaded that any such error as they might be could be material. There was no good evidence before the judge that the appellant could not visit Spain and it seems preposterous on the facts to

suggest that the private and family life findings made by the judge could result in the appellant succeeding under Article 8 to remain in the UK.

15. The judge did not make specific findings in relation to the appellant's social, cultural and family ties with Pakistan but he does make reference to the appellant's family in Pakistan and the very significant period of time that the appellant has been in the UK, albeit six years of that was spent in prison.
16. The judge notes that the case presents an unusual set of facts but it is clear to him and, I find, to anyone else, that there are no exceptional circumstances (see paragraph 36) that would lead to a conclusion different to that to which the judge comes.
17. This is a carefully reasoned decision. The judge could be wrong in his apparent conclusion that the appellant could move to Spain but in all the circumstances any such error is not material.

Conclusion

18. The decision of the First-tier Tribunal Judge stands and the appeal remains dismissed under the Immigration Rules and under Article 8 of the ECHR.

Anonymity

19. I have not addressed on the matter of anonymity but the facts do not suggest that an anonymity direction is required and I do not make one.

Signed

Date

Upper Tribunal Judge Pinkerton