



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

Appeal Number: IA/06163/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23 November 2015**

**Decision & Reasons
Promulgated
On 7 December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MUHAMMAD JAMIL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms S Sreeraman of the Specialist Appeals Team
For the Respondent: No appearance by Addison & Khan, Solicitors

DECISION AND REASONS

The Respondent

1. The Respondent ("the Applicant") is a citizen of Pakistan born on 4 August 1989. On 23 June 2012 he entered with leave as a Tier 4 (General) Student Migrant expiring on 29 July 2013. In time he applied for further leave in the same capacity and on 15 January 2014 the Appellant (the

SSHD) refused his application and made a decision under Section 47 of the Immigration, Asylum and Nationality Act 2006 to remove him to Pakistan.

The SSHD's Decision

2. The SSHD refused the application because the Applicant had not provided evidence that he held sufficient funds as required under Appendix C (Maintenance (Funds)) of the Immigration Rules.
3. On 30 January 2014 the Applicant, through his solicitors, lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds assert the decision under Section 47 of the 2006 Act is not in accordance with the law; that the Applicant has sufficient funds as required under Appendix C and the SSHD had failed to apply her "evidential flexibility policy" as outlined in the determination in *Rodriguez v SSHD [2013] UKUT 42 (IAC)*. Reference is made to the consideration of post-decision evidence and relevant case law. A claim is also made that the removal of the Applicant will place the United Kingdom in breach of its obligations to respect his private and family life protected by Article 8 of the European Convention.

The First-tier Tribunal's Determination

4. By a determination promulgated on 9 July 2014 Judge of the First-tier Tribunal Troup allowed the appeal exclusively on human rights grounds. Both parties were represented at the hearing and the Applicant gave evidence that his then present course of study would come to an end in April 2015.
5. On 2 September 2014 Judge of the First-tier Tribunal Foudy granted the SSHD permission to appeal on the ground that the Judge had erred in his approach to the Article 8 claim and in his assessment whether it would be unduly harsh to expect the Applicant to return to Pakistan.
6. Further, the Judge had found the Applicant had failed to satisfy the requirements of the Immigration Rules but had not explained what factors weighed in his mind which led him to allow the appeal on human rights grounds. He had also failed to take into account the jurisprudence in the determination in *Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC)*.

The Upper Tribunal Hearing

7. There was no appearance by the Applicant or his solicitors. The Tribunal clerk telephoned the solicitors and told me she had spoken to a Ms Tahsin who informed her that the firm was no longer representing the Applicant. This was the first communication on the Tribunal file that they had ceased to represent the Applicant.
8. I was satisfied the Applicant and his solicitors had been given notice of the time, date and place set for the hearing in accordance with Rule 36 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended and that

having regard to the overriding objective including the interests of justice and having considered the issues likely to be raised by the appeal, I decided to proceed under Procedure Rule 38 with the hearing in the absence of the Applicant or any representative for him.

9. Ms Sreeraman for the SSHD relied on the grounds for permission to appeal. The Judge in his consideration of the claim under Article 8 of the European Convention had failed to take into account the jurisprudence in *MF (Nigeria) v SSHD [2013] EWCA Civ 1192* and *R (Nagre) v SSHD [2013] EWHC 720 (Admin)* and the determination in *Gulshan*. Further, the Judge had failed to give adequate reasons to explain why the appeal had been allowed on human rights grounds.
10. The Judge had found at paragraph 14 of his determination that the Applicant did not satisfy the requirements of the Immigration Rules and in the next paragraph found he had sufficient financial resources but failed to indicate the evidence upon which he had based that finding. Further, his assessment of the proportionality of the decision in his consideration of the human rights claim was fundamentally flawed, because it was inadequately reasoned.

Findings and Consideration

11. The Judge dismissed the appeal under Part 6A of the Immigration Rules. By the date of the SSHD's original decision the "evidential flexibility policy" had been incorporated into the Immigration Rules as paragraph 245AA. The Applicant has not produced a copy of his statement of account subsequent to 13 February 2013 so even if the judgment in *Mandalia v SSHD [2015] UKSC 59* has application to this case the Applicant cannot succeed for lack of the relevant evidence. Further and more pertinently, there was no cross-appeal by the Applicant against the dismissal of the appeal under the Immigration Rules.
12. The law in relation to the treatment of claims under Article 8 of the European Convention has moved on since the SSHD's application for permission to appeal and it is not necessary to consider the cases expressly mentioned in the grounds and already cited. However, the Judge failed to adopt the structured analysis of claims under Article 8 recommended in *R (Razgar) v SSHD [2004] UKHL 27*.
13. The Judge did not consider the relevant factors identified in s.117B of the 2002 Act. The Judge in his finding about the Applicant's financial resources did not make reference to the evidence upon which his conclusion was reached and his assessment of the proportionality of the decision was inadequately reasoned. These matters amount to material errors of law such that the determination in relation to the consideration of the claim under Article 8 outside the Immigration Rules should be set aside and that aspect of the appeal re-decided.
14. I first have regard to the factors referred to in s.117 of the 2002 Act. There was no evidence before the Tribunal of the Applicant's ability to speak

English although given the time he has been here and his claimed studies I am prepared for the time being to assume that he is able to speak English. The Applicant has not adequately shown he is financially independent. Other than his studies there was no evidence of any private and family life in the United Kingdom.

15. The Appellant has established a private life in the United Kingdom. The evidence of this is limited to his studies. His proposed removal would interfere with that private life. However, and particularly bearing in mind that his course of studies finished in April 2015, there was no evidence that such interference would be sufficiently serious to engage the state's obligations under Article 8. For this reason, the appeal under Article 8 human rights appeal must also fail.
16. If the Applicant can show that he left the United Kingdom within a reasonable time of completing his studies in April 2015 then the dismissal of this appeal should not be taken adversely when considering any future application he may make from overseas.

Anonymity

17. There was no request for an anonymity direction and having considered the papers in the Tribunal file and heard the appeal, I find none is warranted.

NOTICE OF DECISION

The determination of the First-tier Tribunal contained a material error of law such that its consideration of the Applicant's human rights claim must be set aside. The decision on the human rights appeal is re-made and the Applicant's human rights claim is dismissed.

Signed/Official Crest
2015

Date 30. xi.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE RESPONDENT: FEE AWARD

The Applicant's appeal has been dismissed so no fee award may be made.

Signed/Official Crest
2015

Date 30. xi.

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal