



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

Appeal Number: IA/35662/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 August 2015**

**Decision and Reasons  
Promulgated  
On 20 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**NAZIM ALI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M. Iqbal, counsel instructed by Denning Solicitors  
For the Respondent: Mr E. Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The appellant appealed against the respondent's decision to refuse to grant leave to remain on human rights grounds. The appeal was dismissed by First-tier Tribunal Judge Camp in a decision promulgated on 18 December 2014. The appellant was granted permission to appeal against the decision to the Upper Tribunal.

2. The First-tier Tribunal Judge noted that the appellant had applied for an adjournment the day before the hearing on the ground that he was suffering from an unspecified "severe medical condition". The judge also noted that there was no medical evidence to support the adjournment application and that as such the application had been refused. The First-tier Tribunal Judge noted that reasonable steps had been taken to notify the appellant of the hearing and was satisfied that the hearing could proceed in the absence of any appearance on behalf of the appellant.
3. In a brief decision the First-tier Tribunal Judge concluded that the appellant did not meet the requirements of the immigration rules for leave to remain on the grounds of his private life in the UK for the same reasons given by the respondent in the reasons for refusal letter dated 14 May 2014. The First-tier Tribunal Judge went on to consider whether there were any exceptional or compelling circumstances that were not sufficiently recognised under the rules that might warrant consideration of Article 8 outside of the rules but concluded that the appellant had failed to show the existence of any such circumstances.
4. The First-tier Tribunal Judge noted that he claimed to be in a relationship with a British citizen but found that there was no evidence to support the assertion. Indeed the judge found that there was a lack of credible evidence to support any aspect of his claim. The First-tier Tribunal Judge adopted the contents of the reasons for refusal letter and was satisfied that it was not necessary to go on to consider the appellant's claim that he would be at risk of persecution in Pakistan because if he had a fear of return he should claim asylum.
5. The appellant did not attend the hearing before the Upper Tribunal. I heard submissions from both parties at the hearing. I have noted them in my record of proceedings and will refer to them where relevant.

### **Decision and reasons**

6. After having considered the grounds of appeal and the other documents before the Tribunal, and after having heard submissions, I conclude that the First-tier Tribunal decision did not involve the making of an error on a point of law.
7. The appellant entered the United Kingdom on 12 June 2012 with leave to enter as a student that was valid until 30 September 2014. On 9 May 2014 he submitted a further application for leave to remain on human rights grounds after having been informed that his leave to remain as a student would be curtailed to 1 June 2014. The application was made by way of a letter from Queens Park Solicitors dated 3 March 2014. The solicitors outlined the basis of the appellant's claimed fear of persecution in Pakistan. In summary, the basis of his claim was that he had been in a relationship with an Ahmadi woman and experienced problems as a result of that relationship.

8. The grounds of appeal as argued by Mr Iqbal were narrowed to two main issues. First, whether the First-tier Tribunal Judge was unfair to proceed with the appeal in light of the adjournment application. Second, whether the First-tier Tribunal Judge erred in failing to consider the substance of the protection issues raised. The second ground related to comments made by First-tier Tribunal Judge Keane when he granted permission to appeal.
9. I find that neither ground discloses an error of law. The full hearing was on 28 November 2014. The appellant was sent a notice of hearing on 6 October 2014. He had several weeks notice of the hearing. The adjournment application was made by fax the day before the hearing. The appellant made the application himself. The letter dated 27 November 2014 merely states that he was unable to attend the hearing on account of a “severe medical condition” but no further detail was provided as to what the medical condition was or why it was so severe that it might prevent him from attending court. The adjournment request was not supported by evidence.
10. The application was made the day before the hearing so the notice refusing the application was unlikely to have reached the appellant in time. There is a note on the court file to say that the Tribunal attempted to telephone the appellant to inform him of the decision but no telephone number had been provided. However, the appellant was aware that he had made an adjournment application for a hearing the next day. If he had not received a response he should have telephoned the Tribunal to find out whether the application had been granted. If he did not know the outcome of the application he should have attended the hearing the next day, or if he really was too unwell to attend, he should have sent another person to attend on his behalf. He did none of those things.
11. There was no indication that the appellant had prepared his case for the appeal. No appellant’s bundle had been served in advance of the hearing. There was no detailed witness statement by the appellant outlining any of the circumstances of his claim for protection or relating to the human rights claim. No background evidence had been produced or any other supporting evidence. All of this indicated that the appellant had not prepared for the appeal and perhaps did not intend to attend the hearing. In light of the circumstances outlined above I find that no material unfairness was caused to the appellant by the First-tier Tribunal Judge deciding to proceed with the appeal.
12. The second ground of appeal relates to the way the First-tier Tribunal Judge dealt with protection issues under Article 3 of the European Convention. It is true that the First-tier Tribunal Judge did not consider the Article 3 issues in any detail and merely adopted the same approach the Secretary of State had done in the reasons for refusal letter, which said that if he wished to raise protection issues he should claim asylum. Although a First-tier Tribunal Judge has a duty under section 6 of the Human Rights Act 1998 to consider human rights issues, in the

circumstances of this particular appeal, I find that the First-tier Tribunal Judge's failure to engage with the substance of Article 3 was not material.

13. Firstly, the claim had only been set out in rather general terms in a cover letter from the appellant's legal representatives. The appellant had not prepared a detailed witness statement nor was the claim supported by any background or other evidence. There was very little evidence for the judge to consider. The appellant made a weak and unsupported adjournment application and then chose not to attend the hearing. Therefore it was not possible for the judge to assess the credibility of the general statements made in the original application.
14. Secondly, even if the appellant's protection claim was taken at its highest it is difficult to see how it could succeed. He claims he was in a relationship with an Ahmadi woman in Pakistan. He is not Ahmadi. Although he says that he had some problems in his local area as a result of his association with the woman it is difficult to see how he could have succeeded in a protection claim when his fear emanates from members of their respective families. He now claims to be in another relationship and the relationship with Jabeen is no longer subsisting. There is no evidence to suggest that the appellant would currently be at risk. Nor is there any evidence to show that he would be unable to relocate to another area of Pakistan where he could live in safety.
15. For the reasons given above I find that the First-tier Tribunal Judge's failure to deal with the substance of the Article 3 claim does not amount to a material error of law because there was so little evidence before the Tribunal that the appeal, even taken at its highest, was bound to fail. In the absence of any meaningful evidence to support the protection claim it was sufficient for the judge to adopt the approach contained in the reasons for refusal letter.
16. I conclude that the decision did not involve the making of an error on a point of law and that the decision shall stand.

### DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed 

Date 18 August 2015

Upper Tribunal Judge Canavan