



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

Appeal Number: IA/44617/2014

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 1 September 2015**

**Decision Promulgated  
On 10 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MD DIDER HOSSAIN  
(NO ANONYMITY ORDER)**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer  
For the Respondent: Mr S Karim, instructed by Uzma Law Ltd, London

**DECISION AND REASONS**

1. On 5 July 2015, First-tier Tribunal Judge Kelly granted the appellant Secretary of State permission to appeal against the decision and reasons statement of First-tier Tribunal Judge Manyarara that was promulgated on 6 May 2015.

**The grounds of appeal**

2. The grounds of application are adopted as the ground of appeal. The first ground argues that Judge Manyarara failed to give adequate reasons

for finding that Article 8(1) of the human rights convention was engaged. The second ground develops from this point and argues that even if Article 8(1) was engaged, the judge has failed to properly assess proportionality because she failed to evaluate the public interest or to weigh it against Mr Hossain's particular circumstances. This point is explored further in the third and fourth grounds. The third ground argues that the judge took into consideration immaterial matters when assessing the proportionality of the immigration decision and the fourth ground alleges that the judge failed to have regard to the statutory provisions regarding public interest considerations set out in s.117B of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014), particularly in relation to s.117B(5) regarding the precarious nature of Mr Hossain's immigration status whilst he established private life in the UK.

3. Mr Avery's submissions did little to amplify these grounds, other than to remind me that Judge Manyarara's consideration of whether the immigration rules had been applied fairly relied on the assumption that no decision had been reached on the application of Mr Hossain's entrepreneurial partner. Mr Avery submitted that in fact that partner's application had been refused for wholly different reasons and therefore the judge's assumption was a material misdirection. Mr Avery also reminded me of developments in case law regarding s.117B, in particularly taking me to AM (S 117B) Malawi [2015] UKUT 260 (IAC).

### **Mr Karim's submissions**

4. Mr Karim relied on the detailed rule 24 response of 24 August 2015 which he adopted as his skeleton argument. He submitted that as explained in Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) it was for Judge Manyarara to consider what weight to attach to the evidence and that is all he had done.
5. Mr Karim relied on Shizad and other authorities cited in the skeleton argument to submit that it was accepted that a judge did not have to give detailed reasons for every finding and that it is permissible to infer from a decision and reasons statement as a whole to identify whether enough had been done by the judge. Mr Karim took me through Judge Manyarara's decision and reasons in order to show me why he thought the judge had considered all the evidence and relevant law. In so doing he enhanced those parts of the skeleton argument which did the same.
6. Turning to the other allegations in the grounds of appeal, Mr Karim relied on the skeleton arguments. He pointed out that the judge had recognised that Mr Hossain had been treated unfairly by the Secretary of State because the Home Office had failed to give Mr Hossain a proper opportunity to deal with the full parameters of the case against him. This was clearly a material issue in relation to proportionality.
7. As to the last ground of appeal, Mr Karim reminded me of the case law Judge Manyarara cited in paragraph 25 of his decision and reasons

statement which correctly identified that he could consider Article 8 directly. Mr Karim had little to say on this point and merely reminded me that the threshold to engage Article 8 is not particularly high.

### **Errors of law**

8. After discussing the competing arguments with Mr Avery and Mr Karim, I reached the conclusion that Judge Manyarara had failed to give adequate reasons in relation to the second and fifth Razgar questions. Although in paragraphs 25 to 30 Judge Manyarara correctly identified that he had to consider Article 8 directly and that in so doing he must follow the five step approach in Razgar, at paragraph 31 he gave no reason for finding that the first two questions were to be answered in the affirmative. Judge Manyarara simply made a bald assertion. Although I accept Mr Karim's submission that a judge does not have to give detailed reasons for every finding and even taking into account the low threshold to engage Article 8(1), the failure to give any reason must be an error of law because the parties do not know how the judge came to his conclusion.
9. In reaching this decision, I am satisfied that nothing can be inferred from paragraphs 25 to 30 as to Mr Hossain's private or family life rights. The second Razgar question is whether an immigration decision will cause such interference to have consequences of such gravity as potentially to engage the operation of Article 8. Apart from having held leave to enter and remain in the UK and the evidence about the activities Mr Hossain had undertaken since arriving in the UK, there was nothing to indicate why the immigration decision would cause interference of such gravity, particularly given the case law regarding private life rights such as Nasim and others (Article 8) [2014] UKUT 25 (IAC). There was nothing to indicate why Mr Hossain's moral or physical integrity might be undermined by the immigration decision and the mere fact that the immigration decision might bring the appellant's private life to an end in the UK is not enough to say that the consequences are particularly grave.
10. In addition, I am unable to accept that I can infer from paragraph 30 that Judge Manyarara had proper regard to the provisions of s.117B when assessing the proportionality of the immigration decision. These are statutory provisions and each must be addressed. Although Judge Manyarara made findings in respect of the economic wellbeing of the UK and that he had not remained in the UK unlawfully, there is no finding in relation to private life being established at a time when the Mr Hossain's immigration status was precarious. Even though the judge did not have the benefit of AM it should have been clear to him that he needed to make a finding as to whether Mr Hossain's status was precarious or not. The absence of a finding on a material matter is an error of law.

### **Remaking the decision**

11. Because of the nature of the errors, the decision and reasons statement cannot stand. I have found that the decision in relation to Article 8 is

infected with legal errors and has to be remade. As there has been no challenge to Judge Manyarara's finding that Mr Hossain could not succeed under the immigration rules the remaking of the decision is limited to the Article 8 grounds.

12. After discussing with the parties how I might correct these errors, although Mr Avery wished the case to remain in the Upper Tribunal, I decided that it would be appropriate to remit the appeal to the First-tier Tribunal for a fresh hearing. This was because the extent of the errors means this case falls within those that should be remitted because of otherwise Mr Hossain would be deprived of potential rights of appeal.

### **Directions**

13. With regard to the rehearing of the appeal, I direct that it is limited to a consideration of Article 8 only and that the structured approach established in Razgar should be followed. No step is conceded and findings will be required on each step. In that respect, the parties are at liberty to submit further evidence although any documentary evidence must be filed and served at least 14 days before the next hearing. The appeal can be before any First-tier Tribunal Judge other than Judge Manyarara

### **Decision**

The decision and reasons statement of Judge Manyarara contains errors on points of law and is set aside.

I remit the appeal to the First-tier Tribunal subject to the directions above.

Signed

Date

Judge McCarthy  
Deputy Judge of the Upper Tribunal