Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/00916/2015**

THE IMMIGRATION ACTS

Heard at Stoke	**Decision & Reasons Promulgated**
On 11th March 2016	**On 20th May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

Mr MOHAMMED ISLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sarwar, Counsel instructed by Syeds Solicitors
For the Respondent: Mr Harrison, Senior Presenting Officer

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Blum dated 8 September 2015. The appeal relates to a decision by Designated Judge of the First-tier Tribunal Garratt promulgated on 7 July 2015. The Judge dismissed the appeal against the Respondent's decisions refusing the application based on protection and human rights grounds.

2. The background to the Appellant's case was highly unusual. The Appellant had arrived in the United Kingdom in 1999 and had claimed asylum the

same day. The Judge noted that it had taken the Respondent fifteen years to make a decision to refuse that claim for asylum. The Judge concluded that despite the long period of time spent in the United Kingdom by the Appellant, it did not reach the 20 years required by paragraph 276ADE of the Immigration Rules. The Judge concluded that in respect of Article 8 of the European Convention on Human Rights removal would not amount to a disproportionate interference.

3. The Appellant's grounds of appeal were broad ranging but permission was only granted in respect of one. Namely,

   "Although the Judge took account the length of time the Appellant remained in the United Kingdom it is arguable that the Judge failed to apply the principles enunciated in **EB (Kosovo)** [2008] UKHL 41 in respect of any reduction in the public interest consequent on delay. Permission is granted on this basis."

4. At the hearing before me Mr Sarwar said he had just been instructed and had not drafted the grounds of appeal. He said that there was a Rule 15 application to adduce new matters. These related to the asylum claim and were connected to the Appellant's memory problems. It was said in the letter from Mr Sarwar's instructing solicitors that,

   "For the above reasons, we would submit the above evidence is admitted under Rule 15 to ensure the furtherance of the overriding objective and to ensure parties are on a level playing field and giving the benefit of the doubt in favour of the Appellant due to his particular vulnerability as a result of the memory confusion and lack of recall and depression leading to impairment of his mental health. Otherwise it would be unfair and unjust in the circumstances to not admit the above said evidence".

5. Having considered the matter, it is my clear view that it is far too late to now seek admission of this very late evidence. The claim for asylum was in 1999. The First Incident Reports and the like now being produced have an air of unrealism about them some 17 years later. As for the medical notes and letters and the medical note of the Appellant's brother, the proper place and forum for raising all of that was at the hearing before the Judge. I cannot ignore that it is the same solicitors who now act for the Appellant as did before the Judge. If the solicitors did not realise the importance of the First Incident Reports previously or indeed the medical evidence then that is not of itself a good reason to now admit that evidence. I would be very surprised if questions about documents were not raised and I find it surprising that the Appellant just happened to produce the First Incident Reports this year because of his "illiteracy and memory problems". Overall, the Appellant was represented by Counsel at the hearing before the Judge. He also appears to have been represented throughout the Tribunal proceedings by the same solicitors. In reality this is an attempt to reargue the appeal differently in respect of the protection claim and to broaden the basis of the grant of permission to appeal. Therefore despite Mr Sarwar's able submissions, I refuse the Rule 15 application.

6. Mr Sarwar's submissions in respect of the ground of appeal in respect of which permission was granted said that the Appellant had built up a strong private and family life. It was contrary to the findings of the Judge who had failed to undertake a balancing exercise. In respect of delay there was a legitimate expectation that it would be dealt with in time. It was for some unknown reason that the claim for asylum was not dealt with in a timely manner. The Appellant has developed a close and personal bond. Had it not been for the delay by the Home Office then the Appellant would not have done so. There was also reference by Mr Sarwar to a legacy claim. Finally Mr Sarwar submitted that the Judge had failed to ask himself whether the Appellant's case came within the exceptional type of case where discretion ought to apply outside of the Rules.

7. Mr Harrison in his submissions said he relied on the Rule 24 Reply. He said that there were also a couple of factual aspects which ought to be mentioned. It was wholly accepted that there was a very long delay by the Home Office. The question was not always "why" but "what has happened". The Judge's decision suggested that some of this was due to the Appellant's inaction and that of his previous solicitors. It was a great disappointment that the Home Office decision was not dealt with more swiftly. Mr Harrison said he was content for the **EB (Kosovo)** and the section 117 Nationality Immigration and Asylum Act issues to be left to the Rule 24 Reply.

8. I then heard further submissions from Mr Sarwar in reply. Both Mr Sarwar and Mr Harrison agreed that if I found that there was a material error of law in the Judge's decision then the matter ought to return to the First-tier Tribunal for hearing.

9. I had reserved my decision.

10. Despite the Respondent's Rule 24 Reply and despite Mr Harrison's submissions, in my judgment there was an error of law in the Judge's decision in respect of the issues arising out the assessment of Article 8. The delay of 15 years in dealing with the asylum claim had consequences even though the asylum claim was rejected and dismissed thereafter. That is because the Appellant's life for those 15 years or so (now 17 years) has been in the United Kingdom. There can be no doubt that he has established private life but also family life during that lengthy period of time. It was against that background of this unusual case that the Article 8 assessment had to take place.

11. The Appellant's grounds of appeal refer in full to paragraphs 14 to 16 of the judgment Lord Bingham in **EB (Kosovo)**. As is clear, delay may well be relevant in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control. In my judgment in a case such as this with very long delay, the majority of which remains unexplained by the Respondent, these words were apt for full and proper analysis in the Article 8 and **Razgar** assessment by the Judge. The failure to do so was a material error of law.

12. Therefore having found that there is a material error of law, in line with the parties' joint position that the matter be remitted to the First-tier Tribunal that shall be the order I will make.

13. For the avoidance of doubt, the protection claim and the appeal in respect of the Immigration Rules remain dismissed. Therefore the findings of the Judge at the First-tier Tribunal relating to those matters shall remain. The remitted hearing will only deal with Article 8.

Notice of Decision

The decision of the First tier Tribunal Judge involved the making of a material error of law.

The Appellant's appeal is remitted to be reheard at the First Tier Tribunal in respect of Article 8.

An anonymity direction is not made.

Signed Date: 11 April 2016

Deputy Upper Tribunal Judge Mahmood