



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/08580/2013**

THE IMMIGRATION ACTS

Heard at City Centre Tower, Birmingham

**Decision & Reasons
Promulgated**

On 4 November 2015

On 20 January 2016

Before

**UPPER TRIBUNAL JUDGE PITT
DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SFZ

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer
For the Respondent: Mr G Hodgetts, Counsel, instructed by Sultan Lloyd
Solicitors

DECISION AND REASONS

1. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
2. This is an appeal against the decision of First-tier Tribunal Judge Page dated 23 October 2013 which allowed the appeal of SFZ on Article 8 grounds.

3. For the purposes of this determination we refer to the Secretary of State for the Home Department as the respondent and to SFZ as the appellant, reflecting their positions before the First-tier Tribunal.
4. The appellant is a national of Afghanistan born in 1994. The background to this matter is that he came to the UK in 2009 aged 14 and claimed asylum. His claim was refused on 6 October 2009 but he was granted discretionary leave on the basis of his age until 1 February 2012. On 31 January 2011 he made an application for further leave to remain on asylum and human rights grounds. The respondent's decision of 23 August 2013 refusing further leave gave rise to these proceedings.
5. First-tier Tribunal Judge Page did not find that the appellant had made out his protection claim, finding at paragraph 22 that there was "no serious possibility that the appellant's asylum story, as told, could be the truth given the lack of any significant detail." There is no challenge to that part of the decision from the appellant.
6. Judge Page went on to consider the Article 8 claim. He found that the appellant had a strong family life with his foster carers and that he had established a private life of some substance in the four years that he had been present in the UK. There is no challenge to those findings before us.
7. Mr Mills conceded that the grounds insofar as they challenged adequacy of reasons were not sustainable as the reasoning and examination of the evidence by the First-tier Tribunal Judge was admirably thorough. The respondent maintained that two errors arose in the second stage Article 8 assessment, however.
8. Firstly, it is now well understood that the Immigration Rules represent a legitimate view of when an Article 8 claim should be allowed. It was common ground that the appellant here did not meet the requirements of the Rules relating to family and private life. Where that was so, the judge had not followed the correct approach which required the failure to meet the Rules to be the starting point in the Article 8 proportionality assessment and taken as a strong factor weighing in favour of the public interest and against the appellant. The judge here failed to take that approach.
9. Secondly, where the Rules were not met, the Tribunal was required to find there to be compelling or exceptional circumstances in order for the public interest to be outweighed. The First-tier Tribunal had not identified compelling or exceptional circumstances capable of outweighing the public interest. Certainly, where the appellant could only be said to have been in the UK when his immigration status was precarious, the private life he established, attracted little weight on the correct application of section 117B (5) of the Nationality, Immigration and Asylum Act 2002.
10. It was not our view that the First-tier Tribunal Judge took an incorrect approach to the failure to meet the Immigration Rules in the second stage Article 8 assessment. Firstly, Judge Page refers himself in paragraph 24 to the two stage approach set out in MF (Nigeria) v SSHD. That approach was

upheld more recently by the Court of Appeal in SS (Congo) v SSHD [2015] EWCA Civ 387. There is a finding at paragraph 24 that the Immigration Rules were not met and that it was this that led to the need to proceed to a second stage assessment. It cannot be said that the judge did not have the failure to meet the Immigration Rules in mind as he commenced the second stage assessment. It was not the respondent's case before us that there was no requirement for a second stage assessment here. That must be right where the applicant's relationship with his foster family is not provided for by the Immigration Rules, for example.

11. Having directed himself to the correct approach to the failure to meet the Immigration Rules, we were not taken to anything in the ensuing consideration that suggested that the First-tier Tribunal departed from that correct approach. The judge said this at [38]:

"This has been a *finely balanced exercise*, weighted in the appellant's favour by one additional factor. The appellant is half way through his training as a motor mechanic at Gloucester College. There is no pressing need to remove the appellant to Afghanistan. The respondent said as much in granting the appellant leave to remain in the United Kingdom until 1 February 2012 after he arrived on 11 February 2009 - and then not making a decision to remove the appellant from the United Kingdom until 23 August 2013, some eighteen months after the appellant's leave to remain had expired. I take this delay into account in forming the view that the appellant should at least be allowed to complete his training as a motor mechanic before any consideration is given to removing the appellant from the United Kingdom to Afghanistan. He has worked very hard in the United Kingdom, taking full advantage of all educational opportunities and training opportunities and his immigration history does not dictate that this should be truncated by his forcible removal to Afghanistan. On balance and at the present - I emphasise at the present time - the respondent's decision to remove the appellant to Afghanistan is *a disproportionate response to the legitimate aim of immigration control*. This is because of the interference with the appellant's private and family life in circumstances where the appellant is at a crucial stage in his training which Mr and Mrs A are sponsoring. I therefore allow the appeal under Article 8 in anticipation that, at the very least, the appellant will be granted a further period of leave to remain sufficient for him to complete his training as a motor mechanic and continue living with his foster parents until then (our emphasis)."

12. The first line of this paragraph refers to the assessment being a balancing exercise. Everything in this paragraph and the remainder of the decision indicates that the judge understood that on one side of this balance was the public interest legitimately represented by the failure to meet the Immigration Rules. There is the correct self-direction, as above. In addition, there is an explicit reference towards the end of paragraph 38 to "the legitimate aim of immigration control" being outweighed here.
13. We did not find that the determination here showed an incorrect understanding or application of the importance of the failure to meet the Immigration Rules in the second stage Article 8 assessment.

14. The respondent's second challenge before us was that the judge reached a conclusion that was not reasonably open to a rational decision-maker on the evidence provided. We did not find that argument to be made out. As above, the finding of a strong family life between the appellant and his foster family and of a substantive private life is not challenged. It is not just the conclusions at paragraph [38] that led to the finding of a disproportionate interference with family and private life but the thorough assessment at paragraphs [32] to [37] of all of the particular factors in play here. Although there is no specific reference to "compelling" or "exceptional" circumstances, read fairly the decision shows that the judge found the substance of the appellant's history, family and private life and the particular "additional factor" here of the progress made and stage reached in his education sufficiently exceptional so as to outweigh the public interest for a limited period. On the evidence before him, that was a conclusion legitimately open to the First-tier Tribunal judge.
15. For those reasons we did not find the grounds had merit.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed 
Upper Tribunal Judge Pitt

Date 9 November 2015