



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

Appeal Number: HU/06071/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision

&

Reasons

On 11 October 2017

Promulgated

On 14 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**IBRAHIM KHAUKHAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Basharat of Counsel, instructed by Farani Javid Taylor Solicitors LLP

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Griffith promulgated on 24 January 2017.
2. The Appellant is a citizen of Pakistan born on 5 November 1986. The point raised before the Upper Tribunal is a narrow point and in all of the circumstances I do not propose to rehearse in any detail or at any length the background to the appeal. The Appellant's immigration history and the nature of his application are all a matter of record on file. More

particularly, all such matters are rehearsed in sufficient detail in the decision of the First-tier Tribunal.

3. Indeed, in an admirably clear decision First-tier Tribunal Judge Griffith sets out in detail the background to the appeal (paragraphs 1-10). The Judge then sets out in detail the evidence at the hearing (from paragraph 12 *et seq.*), and records the submissions of each of the parties' representatives (paragraphs 28-37). Thereafter the Judge sets out her reasoning and findings (paragraph 38 *et seq.*).
4. The Judge, although dealing with a human rights appeal, gave consideration to the Appellant's circumstances guided by reference to the Immigration Rules, before proceeding to a consideration of Article 8. The Judge does not reach the freestanding Article 8 consideration until paragraph 47 of the Decision.
5. No complaint is raised before the Upper Tribunal in respect of any of the Judge's analysis of the facts, her findings of facts, or her application of those facts to the Immigration Rules.
6. The Judge determines - and, as I say, does so unchallenged - that the Appellant did not satisfy any of the requirements of the Rules. At paragraph 47 the Judge in substance deals in brief terms with the first four **Razgar** questions and finds in the Appellant's favour in respect of the first two, and that there is essentially no issue in respect of the third and fourth. No challenge is brought to that analysis.
7. At paragraph 48 the Judge gives consideration to the public interest considerations pursuant to section 117B of the Nationality, Immigration and Asylum Act 2002. Again, no challenge is brought to the Judge's evaluation of these matters.
8. At paragraph 49 the Judge refers to the nature of a proportionality assessment involving weighing up the circumstances of an individual against the public interest, and cites a passage from **SS (Congo) & Ors [2015] EWCA Civ 387**. That passage is in the following terms:

"In our judgment, even though a test of exceptionality does not apply in every case falling within the scope of Appendix FM, it is accurate to say that the general position outside the sorts of special contexts referred to above is that compelling circumstances would need to be identified to support a claim for grant of leave to remain outside the new Rules in Appendix FM."

9. The Judge then concludes her analysis of the Appellant's case by reference to Article 8 at paragraph 50 of her Decision in these terms: *"I have set out above the Appellant's circumstances and my assessment of them based on the evidence before me."* - I interject that, as I have said, no criticism of any of that foregoing analysis is made before me - *"For those reasons I am unable to find any compelling circumstances disclosed in the Appellant's case that are sufficient to outweigh the public interest. Accordingly, I do not find the decision of the Respondent to be disproportionate."* The appeal is thereupon dismissed.

10. Challenge is raised against the Judge's approach in paragraph 50. The challenge is perhaps most conveniently encapsulated and summarised in the grant of permission to appeal by First-tier Tribunal Judge Pickup on 7 August 2017 in the following terms:

*"It is arguable that at [50] of the decision, after following the **Razgar** stepped approach, the Judge has conflated compelling circumstances for considering Article 8 outside the Rules with the test of proportionality. It is not clear that the correct test and standard has been applied."*

11. The Respondent has filed a Rule 24 response dated 29 August 2017. The Tribunal's attention is directed to the following passage at paragraph 57 of the case of **Agyarko [2017] UKSC 11**:

"The critical issue will generally be whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the Article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control."

12. In my judgment the Judge's approach at paragraph 50 - where she expressly balanced the personal circumstances of the Appellant and concluded that there was nothing in those circumstances that was sufficiently compelling to outweigh the public interest - mirrors, or echoes, the approach identified as appropriate by the Supreme Court in **Agyarko**.

13. In short: the Judge clearly and obviously, pursuant to an analysis of the facts of the particular case that is not otherwise challenged, concluded that the Appellant did not have a very strong or compelling claim such as to outweigh the public interest in immigration control. In those

circumstances I consider that the Judge's approach was entirely in accordance with the guidelines set out in **Agyarko**.

14. I find no error of law and accordingly the decision of the First-tier Tribunal Judge stands.

Notice of Decision

15. The decision of the First-tier Tribunal contained no errors of law and stands.

16. The Appellant's appeal remains dismissed.

17. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:

Date: **13 November 2017**

Deputy Upper Tribunal Judge I A Lewis