



**Upper Tribunal
Asylum and Immigration Tribunal**

Appeal Number: IA/30002/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 June 2017**

**Decision and Reasons
Promulgated
On 7 June 2017**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

**MR MOHAMMED WASEEM
(Anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the appellant: Mr Muquit of Counsel

For the respondent: Mr Avery, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, born on 15 April 1976 appealed to the First-tier Tribunal against the decision of the respondent dated 21 August 2015 to refuse his application for leave to remain in the United Kingdom outside the Immigration Rules and based on his family and private life in this country. First-tier Tribunal Judge R Cooper dismissed the appellant's appeal on 11 October 2016 relying on the previous decision by Judge Ruth of the First-tier Tribunal.
2. Permission to appeal that decision was initially refused by First-tier Tribunal Judge Grimmett and subsequently granted by a Upper Tribunal Judge Rimington on 26 April 2017 who found that the Judge

arguably erred in relying on a partial previous decision of Judge Ruth dismissing the appellant's appeal and therefore the case of Devaseelan cannot effectively be applied to the appellant's appeal.

3. Thus, the appeal came before me.

The First-tier Tribunal Judge's findings

4. The Judge made the following findings which I summarise. The Judge accepted the findings of First-tier Tribunal Judge Ruth in a decision dated 19 August 2013 under the principles of Devaseelan and stated that Judge Ruth dismissed the appellant's appeal on Article 8 grounds and under the Immigration Rules.
5. The Judge stated that Mr Muquit, the appellant's representative accepted that the starting point appeal is the decision of Judge Ruth but asks that the Judge depart from the case of Devaseelan, based on the new evidence submitted to the First-tier Tribunal Judge which was not before Judge Ruth.
6. The Judge found that the appellant has not provided a very good reason for failing to adduce the documentary evidence earlier given that it relates to evidence some 20 years ago of incidents. The Judge considered the findings of Judge Ruth found were to be found on the alternative pages of the decision. (The full decision was not available but only alternative pages) Judge Ruth found that the appellant was not credible and found that the appellant's claim that he had lost contact with his family was not credible. The Judge also found that the appellant's evidence to have left Pakistan in 2000 and fear of his safety was "wholly false".
7. Mr Muquit, the appellant's representative, accepted that although the previous decision of Judge Ruth is and should be the starting point for the First-tier Tribunal Judge but submitted that she depart from Judge's findings based on the new documentation provided.
8. The Judge found that there is no reason to depart from the findings made by Judge Ruth. The Judge was satisfied the documents before her which were not before Judge Ruth in 2013 were not credible and therefore the additional evidence produced, could not change the decision of Judge Ruth.

Grounds of appeal

9. At the hearing Mr Muquit, very sensibly, said that he does not seek to rely on the entirety of the grounds of appeal. The grounds of appeal complain that the Judge did not make certain findings when he did. The grounds of appeal, in my view, are a cut-and-paste from some

other grounds of appeal for a different appeal, which has been submitted without due consideration.

The hearing

10. At the hearing, I heard submissions from both parties. Mr Muquit in his submissions said that by relying on the available pages of the decision of Judge Ruth, fell into material error and that “it is a matter of process”. He said that he asked for an adjournment at the hearing before the First-tier Tribunal Judge for the full decision of Judge Ruth to be produced but the adjournment was not granted. He said that no issue is taken with the Judge’s consideration and evaluation of the documentary evidence in the decision. He emphasised that by not having the complete decision of Judge Ruth, that the Judge breached process.
11. Mr Avery on behalf of the respondent submitted that even if there is an error of law in the determination, it is not material. He submitted that there was nothing stopping the appellant from providing the full decision of Judge Ruth and set out that the appellant had not said what was attributed to him by the First-tier Tribunal and the decision at paragraph 59 as alluded to by Mr Muquit in his submissions.
12. Mr Muquit in his reply, once again repeated that it was about “process” and that the appeal be sent back to the First-tier Tribunal for the decision to be remade.

Findings as to whether there is a material error of law in the determination.

13. Essentially, the point been taken by Mr Muquit on behalf of the appellant is that the First-tier Tribunal Judge did not have the complete decision of Judge Ruth and therefore breached due process by relying on it in her decision.
14. The appellant’s appeal against the respondent’s decision refusing the appellant further leave to remain under Article 8 and Judge Ruth in 2013 found that there are no insurmountable obstacles for the appellant to return to Pakistan who can reintegrate in that country. On one of the pages which was available of Judge Ruth’s decision, the First-tier Tribunal Judge reiterated in his decision that Judge Ruth had found the appellant’s claim that he was at risk in Pakistan was “wholly false”. Judge Ruth also found that the appellant is in contact with his relatives in Pakistan.
15. In **Justin Surendran Devaseelan v SSHD [2002] UKIAT 00702** (‘Devaseelan’) guidelines were given on how a second adjudicator should approach the determination of another adjudicator who has previously heard an appeal by the same appellant. It was stated at paragraph 39:

'(1) The first Adjudicator's determination should always be the starting-point. It is the authoritative assessment of the appellant's status at the time it was made. In principle issues such as whether the appellant was properly represented, or whether he gave evidence, are irrelevant to this.

(2) Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator. If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and on the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent.

(3) Facts happening before the first Adjudicator's determination but having no relevance to the issues before him can always be taken into account by the second Adjudicator. The first Adjudicator will not have been concerned with such facts, and his determination is not an assessment of them.'

16. The basis of the appellant's claim before Judge Ruth was that his exclusion from the United Kingdom would breach his rights under Article 8 of the European Convention on Human Rights. This was the very same claim before the First-tier Tribunal Judge who was the second decision maker in his appeal. It was not disputed at the hearing that the second First-tier Tribunal Judge must take Judge Ruth's decision as the starting point and that it is the authoritative assessment of the appellant's status on the date it was made, which in this case was in 2013.
17. That would therefore remain as the authoritative assessment unless and until the appellant provided further cogent oral and or documentary evidence which suggest that the decision of Judge Ruth is no longer safe and based on the additional evidence, which was not before the original decision maker, a different decision is merited.
18. The appellant provided further documentation which was considered by the First-tier Tribunal Judge, who found the documents provided not credible given that they date back to some 18 to 20 years ago of the incidents. The Judge found that the documents had been obtained recently and there was no explanation as to how they came to light more than 20 years after the incidents. The Judge properly applied the guidance in **Tanveer Ahmed** which stated that in asylum and human rights cases, it is for an individual claimant to show the document in which he seeks to rely can be relied on. The Judge was

entitled to find that there is no evidence as to the provenance of the documents submitted and how the appellant obtained them.

19. The Judge did not find the medical report dated 7 April 1997 credible and stated that it does not clearly show it relates to the appellant as the name and date of birth on the document are illegible. The Judge further stated that in any event the document stated that the injury was sustained during a fight 18 years ago. The Judge also did not find the FIR document credible which purports to state that in 1992, a complaint was made that he had assaulted the bus driver with a metal pole. The Judge gave the same reasons for not finding this document credible given that it is more than 20 years after the incident. The Judge also considered the document which purports to show that the appellant was elected as VP of the Islamic Student's Organisation which he claims has come to light some 20 years later without an explanation as to how it came to light.
20. Mr Muquit accepted at the hearing that there was no error of law in respect of the Judge's evaluation and conclusion of the additional documents provided. Therefore, the documents provided did not take the appellant's case any further and the decision of Judge Ruth remains the authoritative assessment of the appellant and his claim, as of the date of the decision by the second decision maker.
21. The appellant did not give oral evidence at the hearing and therefore there was no additional oral evidence for the Judge to consider. Mr Muquit said that when his request for an adjournment was refused by the First-tier Tribunal, he advised his client not to give oral evidence at the hearing. He said that this was for a tactical reason because the appellant wishes to claim asylum and therefore he did not want to compromise his clients evidence. I found that implicit in this submission was that the appellant might run the risk of inconsistencies in his evidence at the hearing and at his asylum interview.
22. I find that if the appellant was going to be truthful, there would have been no reason for him to use such tactics. Be that as it may, the appellant's failure to give oral evidence meant that there was no additional oral evidence for the First-tier Tribunal Judge to consider.
23. It was clear from the decision that Judge Ruth dismissed the appellant's appeal on the evidence provided by the appellant, both oral and documentary. There would have been no need for the first-tier Tribunal Judge to go into specifics because the same claim that was before Judge Ruth to determine, was the same claim before the second Tribunal Judge to determine. I find there is no merit in the argument advanced by Mr Muquit that it is about "the process". The starting point, as he accepted, was the decision of Judge Ruth dismissing the appellant's claim that he cannot return to Pakistan.

Therefore, even if the full decision of Judge Ruth was not available to the First-tier Tribunal, it does not make a material difference to the outcome. I find no other differently constituted Tribunal would reach any other decision based on the evidence before it.

24. The Judge found that there would be no insurmountable obstacles for the appellant's re-integration into Pakistan for the same reason that he found he cannot succeed pursuant to Article 8. The Judge was entitled to find on the evidence that the appellant lived the first 24 years of his life in Pakistan where he attended school and college. The Judge found that even if, the appellant has been in the United Kingdom for over 15 years, he still retains familiarity with the language, culture religion and social norms in Pakistan and can reintegrate into that country.
25. The Judge also found that the appellant is a very resourceful because he has managed to live in this country without legal status for a very long time which shows he can draw on his resourcefulness and adapt to life in Pakistan again. The Judge found that the appellant has no family life in the United Kingdom and there is nothing unusual about his personal circumstances nor has he demonstrated any particularly compelling circumstances that would mean it would not be possible for him to enjoy family or private life if removed to Pakistan. These are all perfectly legitimate and well-reasoned findings on the evidence.
26. I find that there is no material error of law in the decision of the First-tier Tribunal based on the guidance given in the case of Devaseelan as to how a second decision maker should approach the decision of a previous decision maker in respect of the same appellant and the same claim. The Judge was entitled to find that the decision of Judge Ruth was an authoritative assessment of the appellant's circumstances at the date of that decision in 2013 which remains the same unless and until some other evidence is provided for the Judge to depart from the decision made by Judge Ruth. The Judge was entitled to find that there was no cogent evidence for the authoritative assessment of Judge Ruth to be disturbed.
27. There must be finality in proceedings and the same evidence cannot be the subject of several appeals by the same appellant for the same claim. The appellant must demonstrate that there is additional cogent evidence which was not considered by the previous decision maker and why it was not available earlier. The appellant cannot continue to appeal on the same evidence which has been litigated upon. There is no error of law in the decision of the First-tier Tribunal and it stands. This disposes of the appeal.

DECISION

First-tier Tribunal's decision stands. The appellant's appeal is dismissed pursuant to the Immigration Rules and Article 8 of the European Convention on Human Rights.

Signed by

A Deputy Judge of the Upper Tribunal
Mrs S Chana
June 2017

Dated this 6th day of