



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

**Appeal Number: IA/34938/2015**

**THE IMMIGRATION ACTS**

**Heard at Stoke Bennett House  
On 31 July 2017**

**Decision & Reasons Promulgated  
On 8 August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**ADNAN GHALIB**

**(ANONYMITY DIRECTION NOT MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr S Vokes counsel instructed by Citapel Immigration Lawyers

For the Respondent: Mrs Obomi Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Appellant was born on 15 March 1985 and is a national of Pakistan.

3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Meyler promulgated on 9 December 2016 which dismissed the Appellant's appeal against the decision of the Respondent dated 30 November 2015 to refuse leave to remain on the basis of family and private life..
5. The refusal letter gave a number of reasons which were in essence that the Appellant could not meet the requirements of Appendix FM; given the period he had spent in the UK the only potentially relevant provision of paragraph 276ADE he could meet was subsection (vi) but there would be no very significant obstacles to him reintegrating into life in Pakistan; his operation for a brain tumour in 2014 was considered but given that he was receiving only annual checkups there was no reason why he could not receive these in Pakistan and therefore this did not amount to exceptional circumstances.

#### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Meyler ("the Judge") dismissed the appeal against the Respondent's decision.
7. Grounds of appeal were lodged arguing: that the Judge was erred in that:
  - (a) She failed to give sufficient weight to the Appellants family life.
  - (b) The decision that no family life exists tainted the other findings.
8. On 31 May 2017 First-tier Tribunal Judge Adio gave permission to appeal.
9. At the hearing I heard submissions from Mr Vokes on behalf of the Appellant that:
  - (a) He accepted that a narrow point was taken in a case that was finely balanced.
  - (b) At page 48 of the bundle the Appellants cousin had given a statement saying that because of the Appellants health problems they were very close and he had been supporting the Appellant financially and morally.
  - (c) In an Article 8 health case the family life ingredient is more important and this crucial factor had been overlooked.
10. On behalf of the Respondent Mrs Obomi submitted that :
  - (a) There was no material error and the Judge had properly directed herself.

(b) The Judge had taken into account the relationship with the cousins in the UK.

(c) There were strong public interest factors that were relevant in this case and these prevailed over the other factors identified.

### **Finding on Material Error**

11. Having heard those submissions I reached the conclusion that in what is a detailed and very carefully reasoned decision the Tribunal made no material errors of law.

12. It is argued that the Judge was in error in failing to make a finding that family life existed in the UK for the purpose of Article 8 and this could have impacted in the proportionality exercise.

13. I am satisfied having read the Judge's decision that no argument was ever advanced by Mr Pipe who represented the Appellant in the First tier that family life existed for the purpose of Article 8 and indeed the Judge records that concession at paragraph 17 and it is also recorded in her record of proceedings:

*"Mr Pipe did not seek to argue the case under the Immigration Rules, as he said that this was precluded by the date of the decision. Moreover he conceded that the appellant could not satisfy any of the Immigration Rules or indeed Article 4 of the European Convention. Instead he argued the case purely on the basis of private life (physical and moral integrity) under article 8 of the European Convention on Human Rights."*

14. It is a matter for well experienced counsel how they choose to argue their case and Mr Pipe clearly accepted that the family life he enjoyed was part of his private life. Had the Judge decided to go behind that concession, both the Appellant and Respondent would have had to be given the opportunity to address her on the issue.

15. It cannot be argued that the Judge made a finding that no family life exists as I note that the Judge considered the relationship with the family in the UK as part of the Appellants private life in the UK and there of references to their relationship at paragraph 43, 47, 52, 53 55 and 57 noting what they had done financially and emotionally to support him when he was ill: it was then a matter for her to give what weight she felt was appropriate within the context of a private life appeal .

16. This was, moreover, a private life appeal where the starting point was that the Appellant did not meet the requirements of Rules which are said to reflect the Government's and Parliament's view of how, as a matter of public policy, the balance should be struck between the right to respect for private and family life. That was a factor that she was required to give weight to. The Appellants private life was in addition precarious and therefore she was statutorily obliged to give it little weight in the balancing exercise. While not one of the statutory requirements she would also have been entitled to factor into the assessment his precarious status when determining the weight to give to that aspect of his private life based on his relationship with the cousins relying on Rajendran (s117B – family life) [2016] UKUT 00138 (IAC) where headnote 2 states:

*“However, this does not mean that when answering the “public interest question” posed by s117A(2)-(3) a court or tribunal should disregard “precarious family life” criteria set out in established Article 8 jurisprudence. Given that ss.117A-D considerations are not exhaustive, in certain cases it may be an error of law for a court or tribunal to disregard relevant public interest considerations.”*

17. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning and she reached a conclusion that was open to her on the facts before her.

## **CONCLUSION**

**18. I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

**19. The appeal is dismissed.**

Signed

Date 6.8.2017

Deputy Upper Tribunal Judge Birrell