



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11823/2016

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 11.7.2018

Decision & Reasons Promulgated
On 18.7.2018

Before

DEPUTY UPPER TRIBUNAL JUDGE
G A BLACK

Between

MR HASSAN MUZAMMEL
NO ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rahman (Legal representative)

For the Respondent: Mr C Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against a decision and reasons by First-tier Tribunal (Judge Cohen) ("FtT") promulgated on 22.1.2018 in which the appellant's appeal against refusal of his application for FLTR on private life/ human rights grounds was dismissed.

Background

2. The appellant is a citizen of Bangladesh. He claimed that he was the main carer for his elderly aunt who has significant physical health problems including diabetes and she received regular treatment for kidney dialysis.

FTT decision

3. The FtT found that the appellant had established a private life in the UK [18] but he did not meet any of the Immigrations Rules under paragraph 276ADE[16]. The FtT found that the appellant's claim to be his aunt's sole carer was without merit given that he was working and there were adult family members living in the aunt's household including her husband who received Carer's Allowance [19]. His aunt is a British citizen.

Application for permission to appeal

4. In grounds for permission it was contended that the FtT's conduct towards the appellant had been unfair; specifically it was alleged that the Judge shouted at him during the hearing and made him feel intimidated while he was giving evidence. The Judge refused to allow the sponsor to give oral evidence in circumstances where a previous hearing had been adjourned to enable her to come to the Tribunal in order to give evidence. The appellant made a written complaint dated 19.1.2018 to the President of the FtT concerning the Judge's unfair behaviour and conduct. It was further argued that the FtT failed to deal with the "Zambrano" point.

Permission grant

5. Permission was granted by FTJ Buchanan who found that there were arguable grounds and raised particular concern as to the complaint of the Judge's conduct at the hearing.

Rule 24 Response

6. The respondent opposed the application.

Submissions

7. Mr Rahman acknowledged that it was not arguable that the appellant had been prejudiced by the FtT's decision not to hear evidence from his aunt. It was conceded that there was no representative from the respondent present at the hearing and thus the detailed witness statement provided could be relied on. He submitted that the main thrust of his appeal was the conduct of the Judge. (At the end of the hearing Mr Rahman confirmed that he would forward to me his response to the appellant's complaint, which he did and which I have taken into account.)

8. Mr Tarlow took the view that the appeal had been listed prematurely as the Ft Judge had been given no opportunity to comment on the complaints made and that it was necessary to follow the protocol.

Discussion and conclusion

9. I was satisfied that there was no unfairness caused to the appellant by his aunt not being called to give evidence. There was a full witness statement from her and medical evidence in support and the FtT took all of this into account [7]. The decision and reasons was concise. The essence of the decision is clear as are the reasons, which are sustainable on the evidence that was before the FtT. The FtT has set out adequate findings and reasons to enable the appellant to understand why he has not succeeded in his appeal [19]. The FtT found that the appellant entered the UK as a student with lawful leave, worked and established private life [18]. It was accepted that he provided some care for his aunt with whom he was living but his claim that he was required in the UK to care for his aunt as her main carer was entirely rejected by the FtT [19].
10. The FtT's reasons for dismissing the appeal were based on the findings that the appellant's aunt's husband was in receipt of Carers Allowance (for which he had to provide 35 hours pw care to his wife) and that three of the aunt's adult children were living at home and could provide care for her [19]. She was also entitled to support services as she was a British Citizen. There was no evidential or legal basis on which the appellant's aunt would be forced to leave the UK if the appellant returned to Bangladesh. I conclude that the FtT was entirely correct in concluding that there was no "Zambrano" point.
11. As to the issue of unfairness I have decided that this was not a material issue. The appellant has made a complaint about the Judge's conduct and rude behaviour. I have seen correspondence dated May 2018 from the Resident Judge at Hatton Cross who is investigating the complaint and he has requested comment from Judge Cohen, which to date had not been provided. Mr Tarlow took the view that the matter could go no further in the UT until Judge Cohen had provided his comments. Mr Rahman submitted that the error of law hearing could be dealt with as the main issue was that the appellant had not had a fair hearing and felt aggrieved.
12. I considered whether it was appropriate for further steps to be taken in accordance with the Protocol for Judicial complaints and whilst it may be preferable to have Judge Cohen's comments, it was not essential nor material in my view. A complaint has been made by the appellant and I have read his letters dated 19.1.2018 and 19.4.2018. I am satisfied that the nature of the complained conduct was not a complaint as to procedural unfairness and that the behaviour caused no inherent unfairness to the appellant. Clearly the appellant perceived the Judge's behaviour to be rude and intimidating but no complaint is made of any procedural unfairness that would be material to the outcome of the appeal. It was perhaps unfortunate that the Judge did not give the sponsor an opportunity to give oral evidence in the circumstances, but as there was no presenting officer at the hearing, there was no need for her to be called as

her witness statement had been adduced. There was no prejudice to the appellant in that regard. There is no allegation made of bias on the part of the Judge. In short whilst accepting that the appellant may have felt intimidated and that the Judge was rude to him, and whilst taking the view that such behaviour is totally unacceptable from a member of the judiciary, it led to no unfairness procedurally that could have led to a different outcome. That matter will no doubt be resolved under the Judicial complaints procedure and it is hoped that this will be soon given the delay experienced by the appellant.

13. I would add that at the hearing Mr Rahman made submissions in full expanding on the grounds of appeal, which I have taken into account. I specifically stated to the representatives that having reserved the decision, I would consider whether or not the complaints Protocol needed to be further invoked and in the event that I decided that it did not I would proceed to decided the error of law issues. Both representatives agreed to this course of action.

Decision

14. There is no material error of law disclosed in the decision which shall stand.

Signed

Date 17.7.2018

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 17.7.2018

GA Black
Deputy Judge of the Upper Tribunal