



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15427/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 19 June 2018

Decision & Reasons Promulgated
On 31 July 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

FAISAL QAYYUM
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Kashif

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Faisal Qayyum, was born on 23 March 1983 and is a male citizen of Pakistan. He was most recently granted leave to remain as a Tier 1 (General) Migrant; his leave expired on 15 July 2016. Before the expiry of his leave, the appellant applied for indefinite leave to remain on the basis of 10 years' residence. His application was refused by a decision of the respondent dated 9 June 2016. The appellant appealed to the First-tier Tribunal (Judge Hillis) which, in a decision promulgated on 19 April 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appeal proceeded on human rights grounds (Article 8 ECHR). Before the First-tier Tribunal, the appellant's representatives acknowledged that the appellant could not meet the requirements of the Immigration Rules so that aspect of the case was not further considered by the judge. The judge noted that the appellant had children who had been born in the United Kingdom and were receiving education here but who are not British citizens. At [19], the judge wrote:

"Article 8 of the ECHR concerns the proportionality of removing an appellant to continue his family life outside the UK. I therefore conclude that the appellant has failed to show the respondent's decision that his application pursuant to Article 8 did not raise any exceptional or compelling circumstances that engage Article 8 of the ECHR and that his remedy is to make a fresh in-country application for further leave to remain under the Immigration Rules."

3. The appellant complains that the best interests of his children were not considered by the judge. No mention was made by the judge to Section 117 of the 2002 Act (as amended). The grant of permission (Judge Pullig) also notes that there appears to have been an indication in the judge's decision that a threshold criterion was required before he would address Article 8.
4. I am grateful to Mr Kashif for appearing before the Upper Tribunal at very short notice. I find that the appeal should be dismissed. Contrary to what is asserted in the grounds, I do not find that Judge Hillis has imposed any threshold criterion for the engagement of Article 8. It was open to the judge to observe [13] that there existed no compelling or exceptional circumstances in the appellant's case. Notwithstanding that observation, the judge went on to make observations regarding the appellant's circumstances, including the children of the appellant. Even if I am wrong, and the judge has refrained from a proper Article 8 analysis (I acknowledge that his assessment of Article 8 is brief) then I find that, even if the judge had embarked upon a more detailed analysis, the outcome of the appeal would have been the same. Having failed to satisfy the Immigration Rules and, in particular, the requirements for long residence, it would have been necessary for the appellant to have shown that there was something beyond the commonplace which would entitle him and his family to remain living in this country. The fact is that there were no such compelling circumstances in this appeal. The children were not "qualifying children" being neither British citizens nor having lived in this country for more than seven years. The children could return to live in their country of nationality (Pakistan) with other members of the family. The fact the children have been born in this country did not *per se* entitle them to remain here. Further, whilst it is true the judge did not refer to section 55 of the Borders, Citizenship and Immigration Act 2009 there was no evidence at all before the judge that might indicate that children had welfare issues which went beyond remaining with their parents wherever the parents might settle. It does not assist an appellant to allege a failure by the judge to deal in terms with the particular provisions (such as Section 55) whilst, at the same time, providing no evidence which might suggest that, had such a provision been considered, the outcome of the appeal would have been different. The Upper Tribunal will not set aside decisions to carry out a more detailed analysis which will reach the same result.

Notice of Decision

5. This appeal is dismissed.
6. No anonymity direction is made.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 JULY 2018

Upper Tribunal Judge Lane