



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

Appeal Number: HU/16360/2016

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons delivered ex
tempore at the hearing.**

On 7 February 2018

On 8 March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

**MR BEHZAD FARVAHARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr K Gayle, Counsel instructed by Elder Rahimi Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Geraint Jones QC, sitting at Hatton Cross on 27 July 2017 in effect against an application for entry clearance. Permission to appeal was granted by Upper Tribunal Judge Doyle stating, in part, as follows:

“The grounds assert that the Judge erred in his approach to Article 8 ECHR grounds of appeal and gave inadequate consideration to the Appellant’s claimed ability to meet the Immigration Rules. As a result, his Article 8 balancing exercise was flawed. Comparison of paragraphs 11 and 15 betrays ambiguity in the Judge’s findings. It is arguable that the judge has incorrectly applied Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) and Adjei (visit visas – Article 8) [2015] UKUT 0261 (IAC).”

2. Mr Gayle who represented the Appellant in the First-tier Tribunal and indeed appears on his behalf today explained to me that he has had the opportunity before the hearing commenced to speak to Ms Everett about the matter. He says that they have come to an agreed position subject to the Tribunal’s view that there is a material error of law in the First-tier Tribunal Judge’s decision. There was discussion as to what may be the appropriate way forward if there is indeed a material error of law. Miss Everett confirms this agreement.
3. The grounds are set out well at paragraphs 3, 4 and 5 when the following is said:
 - “3. The Judge considered the application of the dicta in Mostafa in relation to in relation to consideration of factors under paragraph 352A Immigration Rules. The judge asserts that the correct procedure, given the alleged factual and other errors in the refusal decision, would have been to apply for judicial review in the High Court, asking for the decision to be quashed and sent back for redetermination. Given the degree to which the High Court is battling against a hug backlog of judicial reviews, as well as the prohibitive associated costs, such an assertion is wholly unreasonable.
 2. The judge’s assertion that the First-tier Tribunal does not have the jurisdiction to quash the decision betrays a materially flawed application of the approach set out in Mostafa. Even under Section 84 of the 2002 Act, the blatant errors in the refusal decision can be more than adequately dealt with as part of the proportionality assessment under Article 8.
 3. At paragraph 11, the judge states that he makes no finding as to whether the Appellant is lawfully married, or whether the marriage is subsisting. It is submitted that this is a material error of law. Although limited to human rights matters, this is an appeal against refusal of refugee family reunion. The judge’s assertion that it would be wrong to place weight in the proportionality assessment on the ability of the Appellant to succeed under paragraph 352A, is perverse.”

4. In addition to those grounds Mr Gayle submitted today that the judge incorrectly said that there was no evidence by way of a written statement from the Appellant. In fact, there was, and I was taken to page 66 of the bundle before the judge and there is indeed a witness statement from the Appellant setting out the background. It has been explained to me that the Appellant, and the Sponsor if I call her that, have been waiting for a long period of time to resolve the geographical separation that has come between them and I am referred to a detailed letter at pages 7 to 11 of the original bundle dated 18 August 2016 from Messrs Elder Rahini Solicitors addressed to the Entry Clearance Manager. That refers to the various applications which had been made and it is said that all the requirements for leave to enter for the Appellant to join his refugee wife here in the UK had been met and that the refusal decision was interfering significantly with family life. Not only that of the Appellant's wife but also of the children and grandchildren, and indeed was impacting upon Mr Nejad's fragile mental health.
5. It does appear that there is strength in what has been submitted on behalf of the Appellant today, namely that there has been a very long which has elapsed whereby this Appellant and the Sponsor have been trying to reunite and I have explored with the parties as to what may be the quickest option in terms of seeking to resolve the issues between the Appellant and the Entry Clearance Officer. It appears that there is merit in what is submitted on behalf of Mr Gayle. Namely, that there appears to be a considerable amount of evidence supporting what the Appellant has contended. The difficulty though is that the evidence needs to be presented fully and at least to be explored by way of oral evidence through the Sponsor and perhaps others who are here in the United Kingdom and again, having canvassed the possibilities with the representatives, it appears that the quickest hearing date will be achievable at the First-tier Tribunal. I am sure that the judge who deals with this matter at the First-tier Tribunal will be furnished with a composite bundle of documents setting out all of the previous evidence and any updating evidence to further support the position which is being advanced. Clearly I cannot make a decision on the evidence but, as I say, it does appear to me that a significant amount of evidence was presented to the Entry Clearance Officer and it does not immediately appear that that evidence was necessarily considered when making the decision.

Notice of Decision

There is a material error of law in the First-tier Tribunal and it is set aside. There will be a rehearing on all matters at the First-tier Tribunal at Hatton Cross.

No anonymity direction is made.

Signed: Abid Mahmood

Date: 7th February 2018

Deputy Upper Tribunal Judge Mahmood