



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

HU/25315/2016

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 23 November 2018**

**Decision & Reasons  
Promulgated  
on 28 November 2018**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**IDRIS FARHAD**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Maguire, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This determination is to be read with:
  - (i) The respondent's decision dated 2 November 2016, refusing the appellant's human rights claim.
  - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
  - (iii) The decision of FtT Judge Farrelly, promulgated on 1 May 2018.

- (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal dated 8 May 2018.
- (v) The grant of permission by the FtT, dated 17 July 2018.
- (vi) The respondent's rule 24 response, dated 13 September 2018, to the grant of permission.

2. Mr Winter submitted thus:

- (i) The grounds in essence raised a short point, the absence of a proper balancing exercise.
- (ii) At [12] - [15] the judge set out only negative aspects of the case. The positive features, which were encapsulated in the grant of permission, were omitted.
- (iii) There was legal error either in failing to take account of those positive aspects at all, or in failing to do so in the further assessment required outside the rules.
- (iv) The decision should be set aside.
- (v) The decision should be remade by remitting to the FtT; by directing further submissions in the UT; or by submissions on the evidence as it stood.
- (vi) On the third of those alternatives, the appellant relied upon all the factors to which attention had already been drawn, and on the respondent's delay, if not in decision-making then at least in effecting removal.
- (vii) This was one of those cases which could succeed on private life - *cf. Rhuppiah* [2018] UKSC 58, 2018 WL 05926586, at [58].
- (viii) The decision should be remade in favour of the appellant.
- (ix) In reply to the submissions for the respondent, Mr Winter observed that although there was a history of non-compliance with immigration formalities, that appeared to consist simply of not reporting, rather than of absconding, and that the appellant's whereabouts had remained known.

3. Having considered also the submissions for the respondent, I am not persuaded either that the making of the decision of the FtT involved the making of an error on a point of law, or that if remade, the case would realistically have any other outcome.

4. There are cases, although not very many, which succeed on private life grounds only. While each case turns ultimately on its own facts, *Rhuppiah*,

which the Supreme Court thought might have been an example, is based on circumstances very much stronger than those of this appellant.

5. The statutory starting point, as Mrs O'Brien submitted, was that the private life of the appellant was to be given little weight.
6. Time going by during which a person has no right to remain in the UK, and is legally bound to leave, but seeks to avoid doing so, as the judge found at [14], can count very little, if at all, in his favour.
7. The features of the appellant's private life which he advanced in his favour are recorded at [8] - [10] of the decision. The judge found that he had not shown his business to be a viable proposition. No error is suggested in that view. Even if he had shown financial success and independence, that would be little more than neutral.
8. Reading the decision as a whole, there is no reason to think that positive features were not considered; rather, they were rightly found to be feeble.
9. The case fell well short of the terms of the rules, and, taking account also of the further submissions for the appellant today, he has disclosed nothing by which he might have been found to have a right to remain in the UK, other than through compliance with the rules.
10. The decision of the First-tier Tribunal shall stand.
11. No anonymity direction has been requested or made.



23 November 2018  
Upper Tribunal Judge Macleman