



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/05940/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 9 January 2019

Decision Promulgated
On 1 February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Mr BASHARAT HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Khan of Parkview solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

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. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Chambers promulgated on 16 October 2018, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 15 September 1990. He is a national of Pakistan who entered the UK on 11 August 2005. He has remained in the UK since then. It has already been established that the appellant was trafficked into the UK.

4. On 10 August 2016 the appellant applied for leave to remain in the UK on article 8 ECHR private life grounds. On 20 February 2018 the Secretary of State refused the Appellant's application.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Chambers ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 12 November 2018 Judge EM Simpson gave permission to appeal stating inter alia

Permission to appeal is granted because:

(i) In an altogether brief decision determining the appellant's appeal against the respondent's refusal of his private life human rights claim for leave to remain in the UK, as asserted, the decision disclosed arguable error when addressing para 276 ADE(1) subpara (vi) to the immigration rules (the rules) in arguably failing to assess the material question, i.e. whether the appellant who entered the UK as a 14-year-old child, found by the Upper Tribunal in a previous appeal to have been trafficked to the UK, and having lived in the UK since 2005, some 13 years at the date of hearing, faced "very significant obstacles to (his) integration" if returning to Pakistan:

(ii) There appeared altogether an overall inadequacy of reasoning with reference to the rules and article 8 is generally.

The Hearing

6. After Mr Khan moved the grounds of appeal, I told Mr Bates that I was struck by the brevity of the decision and asked whether the decision is adequately reasoned.

7. (a) Mr Bates reminded me that this case is about article 8 private life. It has never been the appellant's position that he has family life in the UK. He told me that the Judge's starting point was a decision by the Upper Tribunal dated 17 March 2015. He told me that between [5] and [7] of the decision the Judge says that the private life claim is not strong. He accepted that the Judge does not specify what his starting position is. Although the Judge refers to the Upper Tribunal decision made more than 3 ½ years before his decision was promulgated, the Judge does not summarise the crucial finding from the Upper Tribunal decision.

(b) Mr Bates conceded that the Judge's decision has to be read in conjunction the Upper Tribunal decision, and does not make sense on its own, however he argued that the appellant knows what was contained in the Upper Tribunal decision of 17 March 2015.

Analysis

8. The Judge's findings of fact are at [5], [6] and [7] of the decision. The Judge finds at [7] that the passage of time weighs in the appellant's favour & that the longer he remains in the UK, the stronger his article 8 private life becomes. At [7] the Judge finds that

the appellants private life has grown stronger

9. [5] & [6] of the decision refer to the decision of the Upper Tribunal made on 17 March 2015. In Devaseelan 2002 UKIAT 00702, the Tribunal was concerned with a human rights appeal which followed an asylum appeal on the same issues. The Tribunal said that, in such circumstances, the first Tribunal's determination stands as an assessment of the claim the Appellant was making at the time of that first determination. It is not binding on the second Tribunal but, there again, the second Tribunal is not hearing an appeal against it. The Tribunal set out various principles: the first decision is always the starting point; facts since then can always be considered; facts before then but not relevant to the first decision can always be considered; the second Tribunal should treat with circumspection relevant facts that had not been brought to the first Tribunal's attention; if issues and evidence on the first and second appeals are materially the same, the second Tribunal should treat the issues as settled by the first decision rather than allowing the matter to be re-litigated.

10. The Judge is correct to the Upper Tribunal's decision as a starting point. The difficulty is that the Judge does not set out what has starting point is. He just says that an earlier decision has been made. The very foundation for the Judge's analysis is not contained in his own decision.

11. At [7] the Judge finds factors which weigh in the appellant's favour, but then he rushes to a conclusion which is inadequately explained. At [5] the Judge records that in 2015 the appellant did not meet the terms of paragraph 276 ADE(i)(vi) of the immigration rules. At [7] the Judge records that the appellant's circumstances have changed, yet the Judge does not carry out his own analysis. The Judge does not ask himself whether or not there are very significant obstacles to the appellant's integration in Pakistan. The Judge then fails to carry out an article 8 assessment outside the rules.

12. In MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.

13. The Judge's decision does not contain adequate reasoning. That is a material error of law. I set the decision aside.

14. I consider whether I can substitute my own decision

The Facts

15. The appellant is a national of Pakistan born on 15 September 1990. The appellant entered the UK on 11 August 2005. The appellant's parents died when he was a child. He was left in the care of his uncle in Pakistan, who sold him. The appellant was then trafficked into the UK and used for domestic servitude. In 2006 he escaped from servitude. He was homeless but started to establish himself by providing casual labour.

16. The appellant has lived and worked independently since 2006. The appellant has lived in the UK since 2005. He entered the UK when he was 14. He is now 28 years old.

17. The appellant has no family to return to Pakistan. He has had no contact with anybody in Pakistan since he was trafficked to the UK. The appellant's dominant language is Urdu. In 2015 the appellant spoke little English. Between 2006 and 2015 his social contact was almost entirely within the Pakistani community in the UK. On March 2015 the Upper Tribunal found that there were no serious obstacles to the appellant's reintegration in Pakistan because the appellant's friends, employers and acquaintances are predominantly from the Pakistani diaspora in the UK. The appellant could return to Pakistan and do the same work that he does in the UK there.

18. In March 2015 the Upper Tribunal took guidance from section 117B 2002 Act and found that the appellant's article 8 claim cannot succeed outside the immigration rules.

19. On 10 August 2016 the appellant submitted a fresh application for leave to remain on article 8 private life grounds. The respondent refused that application on 20 February 2018.

20. The appellant has a number of friends in the UK. The appellant's home and employment are in the UK. The appellant's adult life has been led exclusively in the UK. The appellant now speaks English. His ability in the English language has improved significantly since his case was considered by the Upper Tribunal in March 2015. The appellant has neither family nor friends in Pakistan.

The Immigration Rules

21. Because of a combination of his age and the length of time the appellant has been UK he cannot meet the requirements of paragraph 276 ADE(1) (i) to (v) of the rules.

22. In March 2015 the Upper Tribunal considered the previous wording of paragraph 276 ADE (1)(vi) of the immigration rules, which related to social, cultural & familial ties to the country of origin. The Upper Tribunal found that, because of his immersion in the Pakistani diaspora in the UK, the appellant had not lost social and cultural ties to Pakistan. The Upper Tribunal went on to consider the respondent's amendment to paragraph 276 ADE (which introduced the test of very significant obstacles to integration) and found

There would be no serious obstacles to his reintegration since he would be able to do the same work in Pakistan that he does here.

23. What has changed for the appellant since March 2015 is that he has been in the UK for (now) almost a further four years. His relationships have strengthened, and his ability in the English language has improved considerably.

24. In SSHD v Kamara [2016] EWCA Civ 813 it was held that the concept of integration into a country was a broad one. It was not confined to the mere ability to find a job or sustain life whilst living in the other country. It would usually be sufficient for a court or tribunal to direct itself in the terms Parliament had chosen to use. The idea of "integration" called for a broad evaluative judgment to be made as to whether the individual would be enough of an insider in terms of understanding how life in the society in that other country was carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life.

25. In the case of Sanambar v SSHD [2017] EWCA Civ 1284 the Court of Appeal said that consideration of the issue of obstacles to integration requires consideration of all relevant factors some of which might be described as generic. Factors such as intelligence, employability and general robustness of character could clearly be relevant to that issue. The broad evaluation required could also include the extent to which a parent's ties might assist with integration.

26. The appellant has no family or other support in Pakistan. As a child he was orphaned and then a victim of trafficking. He escaped from his traffickers. He has spent 48% of his life, and all of his adult life, in the UK. If he was to return to Pakistan, he would return to his country of origin. He is fluent Urdu speaker. He has demonstrated that he is a resourceful, industrious, young man.

27. Removal to Pakistan would create a period of significant upheaval, but that upheaval does not amount to a very significant obstacle to integration. The appellant's first language is Urdu. The appellant associates mostly within the Pakistani diaspora in the UK. The weight of reliable evidence indicates that the appellant would be enough of an insider to understand how Pakistani society works and that he would be accepted in Pakistan society.

28. The appellant cannot meet the requirements of the immigration rules

Article 8 ECHR

29. S.117B of the 2002 Act tells me to attach little weight to private life established whilst the appellant has been in the UK without lawful leave. Although I attach little weight to the appellant's private life, I bear in mind that the appellant did not choose to come to the UK. He did not choose to live here illegally. The appellant was trafficked into the UK as a child. In his mid-teens the appellant escaped from servitude. The appellant has made more than one attempt to regularise his stay in the UK.

30. The appellant's home, his employment, all of his friendships and his ordinary activities of daily living are all aspects of article 8 private life. The private life the appellant has established exists in the UK, and in the UK only. The appellant establishes private life in terms of article 8 ECHR.

31. If the appellant returns to Pakistan his article 8 private life will come to an end. The appellant would have to start afresh. He would have to find accommodation, employment and establish new friendships. He would leave all his friends behind.

32. The respondent's decision is made solely in the interest of immigration control. In Chengjie Miao v SSHD 2006 EWCA Civ 75 the Court of Appeal noted that the onus lies upon the Respondent to show that the interference or lack of respect is "*necessary in a democratic society*" for one of the stated interests. As the Court of Appeal said at paragraph 12 of the determination "*To do this the State must show not only that the proposed step is lawful but that it is sufficiently important to justify limiting a basic right; that it is sensibly directed to that objective; and that it does not impair the right more than is necessary. The last of these criteria commonly requires an appraisal of the relative importance of the State's objective and the impact of the measure on the individual. When you have answered such questions you have struck the balance*".

33. Even though I attach little weight to the private life that the appellant has established, I find that the respondent relies solely on a statutory presumption. Against that statutory presumption I weigh the quality of private life which the appellant enjoys, and the circumstances which lead to establishing private life in the UK.

34. The appellant established article 8 private life after escaping from slavery and finding himself alone in the UK. The facts and circumstances of this case raise exceptional circumstances which indicate that the appellant's removal would be unjustifiably harsh.

35. The effect of removal will destroy the appellant's business, remove his home, and separate him from the only friends he has. It will put the appellant back to the position he found himself in as a teenager abandoned in the UK. On those facts, I find that the respondent's decision is a disproportionate interference with the appellant's article 8 rights.

36. When I weigh all of these matters, I can only come to the conclusion that the public interest in immigration control is outweighed by the impact that removal will have on the appellant. I find that this appeal succeeds on article 8 ECHR grounds.

CONCLUSION

37. The decision of the First-tier Tribunal promulgated on 16 October 2018 is tainted by a material error of law. I set it aside.

38. I substitute my own decision.

39. The appeal is allowed on article 8 ECHR grounds.

Signed
Deputy Upper Tribunal Judge Doyle

Date 15 January 2019

A handwritten signature in grey ink, appearing to read "Paul Doyle". The signature is written in a cursive, flowing style.