



Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/13918/2017

THE IMMIGRATION ACT

Heard at Field House

On 16th July 2019

**Decision & Reasons
Promulgated**

On 25th July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Mr Nayan Biswas

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Shah, instructed by Taj Solicitors

For the Respondent: Mr C Avery, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judges Meah and Bibi promulgated on the 7th March 2019 whereby the judges dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Article 8 of the ECHR.
2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Keith on 12th June 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. The decision in the First-tier Tribunal has dealt very succinctly with the issues in the case on the basis that a number of concessions were made by the appellant's representative. The extent of those concessions was a matter of concern to Judge Keith.
5. In order to clarify the issues and to ascertain what had happened in the First-tier Tribunal Judge Keith had given specific directions for the appellant's new representatives to seek counsel's notes of the proceedings to establish what had been the concession made by Counsel, Ms Popal, at the hearing. Judge Keith had given detailed directions including what complaint had been made, if any, if Ms Popal had acted without instruction.
6. There is a response made by the solicitors currently acting for the appellant. It suggests that they cannot obtain the notes of evidence made by Ms Popal, although no adequate reason has been given for such. The current solicitors rather than contacting Ms Popal directly or obtaining the file of papers from the previous solicitors directly, allowed the appellant to do so.
7. The current solicitors have taken a statement from the appellant in which the appellant seeks to argue that he had not agreed to the withdrawal of the present appeal.
8. Judge Keith has raised whether any withdrawal was only to one aspect of Article 8 whether that be family life or private life.
9. In part the matter is answered by examining what exactly took place at the proceedings.
10. In the first instance Ms Popal was seeking to have the respondent consider the application made by the appellant on the basis of the 10 year long residence rule. That was not the original application made by the appellant. The indication by the respondent was that they would not consider the application under the 10 year rule as it was a new matter not raised previously. The appellant's representative

indicated that the appellant intended to make an application on the basis of 10 years lawful residence.

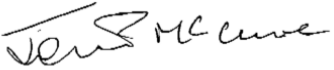
11. There then appeared to be issues relating to the family life ground of the appeal. In issue was whether or not the appellant's spouse or any of his children had any right to remain in the United Kingdom. Issues arose as to what had happened to an application and decision in respect of "the wife's" appeal. Whilst directions had been given that that appeals should be joined to this appellant's appeal if "the wife's" appeal had been remitted, it transpired that the wife's appeal had been dismissed both in the First-tier Tribunal and that decision had been maintained thereafter.
12. It appears that it was conceded at the time that the appellant's wife's appeal had already been dismissed and therefore she and the children of the family had no right to remain in the UK. The children had not lived in the UK for seven years. Neither the appellant's wife or the appellant's children had any right to remain in the UK. Accordingly any right by the appellant to remain on the basis of family had been dealt with and it was conceded that the appellant could not succeed on family life.
13. Having looked at those aspects of the appeal consideration was given paragraph 276 ADE(1). It was also conceded by Ms Popal that no issues of protection nor protection claim would be referred to. On considering rule 276ADE it was accepted that the appellant could not meet the eligibility requirements of the rule. Ms Popal accepted that the paragraph 276ADE (1) argument had to be conceded.
14. Judge Meah indicated in the light of the evidence and facts it was difficult to see how the appellant could succeed under the Immigration Rules. Ms Popal appears to have conceded that the appellant did not meet the requirements of the Immigration Rules.
15. The judges indicated that a short judgment setting that position out could be written disposing of this appeal.
16. Ms Popal indicated that she would take instructions from the appellant. Having taken instructions she indicated that the appellant accepted the inevitability of the position reached.
17. In light of that the issues raised as grounds of appeal, appear to have been fully considered during the hearing and the appellant had been made aware of the fact that he could not succeed on the basis advanced at the hearing and an amendment to consider other basis of appeal were not agreed to by the respondent.
18. I note that in granting permission Judge Keith had raised the case of Anwar (Rule 17 (1) : withdrawal of appeal) 2019 UKUT 00125 (IAC) drawing a distinction between a withdrawal of only one aspect of

Article 8 rights either family or private life whilst still requiring the First-tier Tribunal to consider the other. Here it is clear that a careful examination had been made of both aspects of Article 8.

19. The position of the appellant's wife and family had been considered and subsequently the private life had been considered. Both family and private life within and outside the rules had been considered and valid reasons given for finding that the appellant could not succeed under either aspect. The proceedings had identified specific aspects of Article 8 and why the appellant could not succeed. In the circumstances all aspects of Article 8 had been considered.
20. In the circumstances the Judges were entitled to deal with the appeal in the manner that they did. In light of the concessions the judges had fully considered Article 8 and were fully justified in issuing the decision that they did on the evidence. In the circumstances there is no material error of law.

Notice of Decision

21. I dismiss the appeal on all grounds.

Signed 
Deputy Upper Tribunal Judge McClure
2019

Date 19th July