



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003903

First-tier Tribunal No: HU-55336-2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

26th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Muhammad Naseer CHAUDHARY
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Brown of Counsel, instructed by AG Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 24 November 2023

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Cole dated 24 March 2023 dismissing an appeal against a decision of the Respondent dated 3 August 2022 refusing a human rights claim.
2. The Appellant is a citizen of Pakistan born on 20 July 1977. He arrived in the UK on 18 March 2008 on a visit visa. He did not leave at the expiry of the visit visa and became an 'overstayer'.

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3. On 17 December 2014 the Appellant applied for leave to remain in reliance upon Article 8 of the ECHR. The application was refused on 19 March 2015 with no right of appeal.
4. The Appellant still did not quit the UK. Approximately two and half years later, on 4 September 2017, he applied for leave to remain on the basis of family life with his partner Ms Amra Noreen (d.o.b. 11 May 1979), who at that time had limited exceptional leave to remain. His application was refused on 15 May 2018. However an appeal (ref. HU/12030/2018) was allowed on human rights grounds on 14 December 2018. Thereafter the Respondent granted leave to remain until 14 August 2021.
5. On 4 August 2021 the Appellant applied for a 'fee waiver' which was accepted on 14 October 2021. On 27 October 2021 he completed an online application form for further leave to remain on the basis of his private life in the UK. The application, treated as a human rights claim, was refused on 3 August 2022.
6. The Appellant appealed to the IAC.
7. The appeal was dismissed for reasons set out in the 'Decision and Reasons' of First-tier Tribunal Judge Cole signed on 24 March 2023.
8. The Appellant applied for permission to appeal to the Upper Tribunal, which was granted by First-tier Tribunal Judge Moon on 13 September 2023. In material part the grant of permission to appeal is in these terms:

"2. The grounds assert that the Judge erred in failing to consider evidence in relation to the appellant being a victim of domestic violence as an exceptional circumstance.

3. At the hearing, the appellant's representative confirmed that the Domestic Abuse section of Appendix FM to the Immigration Rules was not relied upon which indicates that it was not asserted that the appellant met the requirements of the Immigration Rules (which would have been positively determinative of the human rights appeal). However, it does not follow from this concession that this aspect was not being relied upon at all. It is arguable that the discussion of this aspect in the decision within the context of the overall Article 8 assessment was inadequate."
9. The Respondent has filed a Rule 24 response dated 21 September 2023 resisting the challenge to the decision of the First-tier Tribunal.

Consideration of the 'error of law' challenge

10. The ground of appeal upon which permission to appeal was granted encounters the very significant difficulty that it is not apparent that reliance was placed on a requirement to have an analogous regard to the Immigration Rules in respect of domestic violence (Appendix FM section DVILR).
11. There is no such pleading apparent either in the application documents or the appeal documents. In particular the matter was not raised in the Appellant's Skeleton Argument.
12. This is not to deny that the Appellant related the claimed factual circumstances of the breakdown of his relationship. It was his claim that his relationship had broken down following abuse from family members of his ex-partner, and indeed - under the influence of family members - from his ex-partner herself. However, in so far as any reliance was placed upon the circumstances and consequences of the breakdown of his relationship, this was in the context of the impact that it had upon the Appellant's health.
13. In particular paragraph 15 of the decision of the First-tier Tribunal is to be noted:

"Despite the allegations of domestic abuse raised in the Appellant's statement, [Counsel for the Appellant] confirmed that the Victim of Domestic Abuse section of Appendix FM of the Immigration Rules was not relied upon in this appeal. [Counsel] confirmed that the Appellant solely relied on his private life, particularly as dealt with in the Immigration Rules."
14. The latter reference at paragraph 15 - private life as dealt with in the Rules - reflects the identification of the key issue in the appeal at paragraph 14: *"The Appellant asserts that there would be very significant obstacles to his integration into Pakistan"*.
15. Mr Brown (who did not appear before the First-tier Tribunal) very fairly acknowledged that the reference to sole reliance on private life particularly as dealt with in the Rules, posed a difficulty in making good this ground of challenge.

16. In my judgement it is no mere difficulty: it is a complete obstacle to the ground. The matter was not raised and did not require to be determined by the First-tier Tribunal.
17. In the course of his submissions, during his reply to Mr Parvar's submissions, Mr Brown argued that the Judge had failed to make any clear finding on the reasons for the breakdown of the Appellant's relationship. I do not consider that this avails the Appellant. In so far as this was tantamount to a pleading that the Judge had erred in law in not making a finding in respect of domestic violence, this was to introduce a new ground of appeal without application. I do not accept the submission that such a matter was covered by paragraph 5 of the grounds: paragraph 5 merely summarises the basis of challenge - "*the above points*" - and as such does not introduce anything further to the two grounds articulated at paragraph 4. No application to amend was made. Accordingly, such a submission cannot avail the Appellant as a ground of challenge herein. More particularly, it seems to me that the absence of any finding in respect of the reasons for the breakdown of a relationship is entirely consistent with the fact that ultimately this was not being relied upon as informing an evaluation of the Appellant's current 'private life' Article 8 rights.
18. For completeness I note that the grant of permission to appeal did not limit the grant to the specific ground identified. The Grounds additionally raise an issue regarding the Appellant's health as being a matter that informs an evaluation of 'exceptional circumstances' in the context of Article 8: see Grounds at paragraph 4b.
19. In my judgement there is no substance to this challenge. The Judge manifestly fully addressed the evidence and arguments in respect of the Appellant's health: see paragraphs 36 and 39.
20. The challenge to the decision of the First-tier Tribunal fails accordingly.

Notice of Decision

21. The decision of the First-tier Tribunal contained no material error of law and accordingly stands.
22. The appeal remains dismissed.

Ian Lewis

Deputy Judge of the Upper Tribunal

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(Immigration and Asylum Chamber)

21 February 2024