



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001437
First-tier Tribunal Nos:
PA/50817/2023
LP/03026/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

Israr Khan
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr F Aziz, Solicitor; W A Law Limited

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard via CVP at Field House on 19 June 2024

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Sarwar promulgated on 11th January 2024 dismissing his appeal against the Respondent's refusal of his protection and human right claim.
2. The Appellant applied for permission to appeal and was granted permission to appeal by First-tier Tribunal Judge Bird on one ground alone, in the following terms:
 - "8. Ground 4 alleges that the judge failed to consider the Article 8 claim adequately and failed to give adequate reasons for his findings – reference is made to paragraphs 44- 47.
 9. The judge appears not to have considered private life outside the rules and further failed to adequately make findings of any private life established and balance that against public interest requirements under section 117B.

10. In his assessment of Article 8 the judge has made a material error of law. Leave is granted on ground 4.”
3. There was no Rule 24 response from the Respondent but Ms Arif indicated that the appeal was opposed.

Findings

4. At the conclusion of the hearing I reserved my decision, which I now give. I do find that the decision demonstrates a material error of law, such that it should be set aside in respect of paragraphs 44 through to 47 and 43 of the decision, save insofar as 53 relates to Article 8 (on the basis that no Article 3 claim was put forward by the Appellant).
5. In respect of the ground, as identified by Judge Bird, the complaint is succinctly put that the judge failed to consider Article 8 outside the Rules having performed an assessment under the Rules primarily on the basis of whether there were very significant obstacles to the Appellant’s reintegration to Pakistan or not.
6. Mr Aziz took me to the decision which demonstrated at paragraph 16 that the judge was aware at paragraph 16(b) that he needed to determine Article 8 in respect of family life at least in the UK and paragraph (d) in respect of whether there were exceptional circumstances or not outside the Rules. Mr Aziz also took me to the appeal skeleton argument which stated at paragraph 6 that private and family life were in issue. In addition to that, in terms of the evidence before the Tribunal, Mr Aziz directed my attention to paragraph 7 of the Appellant’s witness statement, which did mention that he had a brother in the UK and this was apparently embellished by his evidence in oral testimony that he had also had a sister-in-law and nephews, all of whom were British citizens. In respect of the Appellant’s private life, Mr Aziz also highlighted that the Appellant’s bundle contained his passport stamps, which demonstrated the date upon which he entered the UK, as alleged in his statement, thus confirming when his continuous residence in the UK started, establishing the extent of his private life in the UK, albeit it was not sufficient to meet the twenty year threshold under the Immigration Rules.
7. Bearing in mind that Article 8 was an issue that was flagged in the Appellant’s skeleton argument and also noted by the judge at paragraph 16 of the decision, I do find that the consideration given in extremely succinct terms at paragraphs 44 through to 47 is insufficient to determine the Appellant’s private and/or family life under Article 8 ECHR outside the Rules. Notwithstanding that Ms Arif encouraged me to find that the judge had given sufficient reasons, in harmony with Judge Bird’s grant of permission to appeal, I find that the judge has committed a material omission in failing to consider the Appellant’s private life since he entered the United Kingdom in 2008 to date – a period of some sixteen years and therefore not an insignificant or immaterial consideration – as well as his potential engagement of Article 8 in respect of his family life with his brother, sister-in-law and their children.
8. I therefore find that the judge has materially erred for the reasons given above and I duly set aside paragraphs 44 to 47. I also set aside paragraph 53, insofar as it purports to dispose of the Appellant’s private and family life outside of the Rules.

Notice of Decision

9. The Appellant's appeal is allowed.
10. The appeal is to be remitted to the First-tier Tribunal *de novo* in respect of Article 8, private and family life alone, and is to be heard by any judge other than First-tier Tribunal Judge Sarwar.

Directions

11. The appeal is remitted to IAC Manchester.
12. An Urdu interpreter is required.
13. Standard directions are to be issued.
14. Upon remittal, each party is at liberty to seek any further direction that may assist in the further management of this appeal.

P. Saini

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 June 2024