



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/13030/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 28th November 2017**

**Decision & Reasons
Promulgated
On 15th December 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR NADEEM AZAM FAROOQI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hussain, Counsel

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 29th December 1984. He entered the United Kingdom on 11th November 2011 with entry clearance granted as a Tier 4 Student valid until 23rd January 2014. Following the Appellant applying for an extension of leave under the Tier 4 Student route, this was granted with leave expiring on 20th August 2015. A decision was made to curtail the Appellant's leave on 13th February 2015 where the Appellant's leave expired on 19th April 2015. However, on 3rd December 2014 the Appellant had applied for leave to remain under the

family and private route. That application was refused by the Secretary of State by a Notice of Refusal dated 6th May 2016. The Appellant appealed. The appeal came before Judge of the First-tier Tribunal Richards-Clarke at Manchester on 26th January 2017. In a decision and reasons promulgated on 8th February 2017 the Appellant's appeal was allowed under the Immigration Rules.

2. In February 2017 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. The grounds contended there were two errors of law, firstly with regard to the evasiveness the Appellant had allegedly demonstrated in relation to taking the TOEIC test and that the judge had failed to take this into account, and secondly the judge in allowing the appeal on the basis that the Immigration Rules were not met made no further findings on human rights.
3. On 17th August 2017 Designated First-tier Tribunal Judge Murray granted permission to appeal. Judge Murray noted that the Grounds of Appeal stated that one of the reasons for the Respondent not granting the Appellant's application was that she was not satisfied that the Appellant had submitted a valid English language test certificate. Secondly, it was noted that being a Section 82 appeal the right of appeal could only be on a human rights basis and it was arguable that the judge had not considered human rights in her decision.
4. There is no Rule 24 response lodged on behalf of Mr Farooqi. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State. However, for the purpose of continuity throughout the appeal process Mr Farooqi is referred to herein as the Appellant. The Appellant appears by his instructed Counsel, Mr Hussain. The Respondent appears by her Home Office Presenting Officer, Mr Harrison.

Submissions/Discussion

5. Mr Harrison seeks to do no more than rely on the written Grounds of Appeal and confirms that he is not asking me to re-hear the matter today. He does not wish to pursue arguments pursuant to the first Ground of Appeal but merely states that the judge has failed to make due and proper consideration of Article 8. That, he submits, constituted a material error of law. He relies on the grounds submitting that the appropriate test is not whether it is reasonable to expect the Sponsor to go to live in Pakistan where she has work, home and family, but whether there are insurmountable obstacles. Further, that the Tribunal's determination amounts to a finding that the Immigration Rules will never be proportionate in a case involving a British citizen and that no weight has been given to the public interest and this is not consistent with authority.
6. Mr Hussain refutes these contentions stating that if I look carefully at the decision I will find that all issues based on human rights arguments have

been properly considered by the judge and that the decision contains no material errors of law and he asked me to dismiss the appeal.

The Law

7. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
8. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

9. I remind myself that under the current Immigration Rules issues of human rights are properly codified, albeit that there is always an argument that can be raised to consider Article 8 outside the Immigration Rules. My starting point is paragraph 27 of the judge's decision. Here she has stated:

"The Grounds of Appeal claim that the decision breaches the Appellant's rights under Article 8. However as I have reached the conclusion that the Appellant's application comes within the Immigration Rules I do not consider it necessary to consider Article 8 further".

The important word therein is "further". That indicates that what the judge was considering was having firstly considered Article 8 under the Rules and having allowed the appeal, whether she needed thereon after to go on and consider Article 8 outside the Rules. She made a perfectly reasonable conclusion that she did not.

10. Further, it is necessary to look at the judgment. At paragraph 22 the judge gives due consideration as to whether the Appellant meets the requirements of Rule EX.1 of Appendix FM and goes on to give due and proper consideration of the test of insurmountable obstacles. She fully and properly addresses this. That is in direct contradiction to the submission made within the Grounds of Appeal.
11. Further, the judge has thereafter at paragraphs 24 and 25 gone on to consider the Appellant's immigration history and maintenance of effective immigration control and the public interest as set out in Section 117A to 117D Nationality, Immigration and Asylum Act 2002 and made findings at paragraph 25, including a finding on insurmountable obstacles to family life with her partner continuing outside the United Kingdom, that she was perfectly entitled to.
12. In all the circumstances it is clear that the judge has given a very full, detailed and well reasoned analysis of the Appellant's claim on human rights grounds. In such circumstances the decision discloses no material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Secretary of State's appeal is dismissed.

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris