



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/12733/2016

THE IMMIGRATION ACTS

Heard at Field House
On 09 July 2018

Decision & Reasons Promulgated
On 09 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MR TAUQIR AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Jafferji (Counsel)
For the Respondent: Mr P Duffy (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge James, promulgated on 4th January 2018, following a hearing at Birmingham on 5th December 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 21st March 1980. He appealed against the decision of the Respondent dated 4th May 2016, refusing his

application for indefinite leave to remain on the basis of his long residence in the UK, having been in this country lawfully for ten years.

3. The Appellant's application was considered under paragraph 276B of the Immigration Rules by the Respondent Secretary of State, and rejected on the basis that he had submitted a TOEIC certificate from ETS following a test taken at Universal Training Centre on 5th December 2012. The Respondent concluded that based on information provided by ETS the Appellant's test certificates had been fraudulently obtained. Therefore, the Respondent relied on Annex A to show that the refusal of suitability grounds was justified. There were no exceptional circumstances to warrant consideration of a grant of leave outside the Immigration Rules.
4. When the appeal came before Judge James, the judge observed that the Appellant had submitted that the only issue for her to decide was the validity of the TOEIC certificate, and the biggest hurdle before the Respondent was that she had produced no voice verification or proxy evidence. On the other hand, the Appellant had given his evidence in English and he had given full answers with plausible details of how the test was taken.
5. The Appellant submitted before Judge James that if he had used a proxy he would not have known these details. Moreover, he had taken courses in Pakistan taught in English and had passed the life in the UK test and the B2 City & Guilds test in English (paragraph 14).
6. In her findings, the judge observed that,

"The Appellant has produced a wealth of evidence in relation to his TOEIC test much of which I found to be credible and persuasive but in the absence of establishing that Article 8 is engaged I have no jurisdiction to proceed further" (paragraph 24).
7. These conclusions were reached in the context of the judge's findings that the Appellant's reliance on Article 8 grounds was based solely on his private life, and not on his family life, as he was single and had no dependent children. With respect to his "private life" both his parents had died in Pakistan and his five siblings were all married and living in Pakistan. Nevertheless, the judge observed that, "It is undisputed that the Appellant has been living in the UK since 2005" (paragraph 22).
8. However, the judge then went on to conclude in relation to the Appellant's private life that, "Looking at all the evidence in the round I am not satisfied that the Appellant has demonstrated that he has a private life in the UK that engages Article 8(1)" as was concluded towards the end of the determination (paragraph 23).
9. These findings were reached in the light of a careful recital of the existing case law in relation to the establishment of private life. For example, the judge observed that in accordance with **Bensaid v UK [2001] 33 EHRR 10**, it is a case that, "Private life is a broad term not susceptible to exhaustive definition". In relation to **Jasarevic v SSHD [2005] EWCA Civ 1784**, it was observed that the Court of Appeal had stated that a long period of living and working in the UK may give rise to private life engaging Article

8(1). In contrast, however, in **Hani [2002] UKIAT 02215**, the Tribunal indicated that mere presence in the UK may not be sufficient to establish private life here. Therefore, every case will depend on its circumstances. Moreover, in **MG [2005] UKIAT 00113**, the Tribunal stated that, in any event, it will be necessary to enquire into whether interference will “have consequences of such gravity” as actually to engage Article 8 at all (see paragraph 21 of the determination of Judge James).

10. The judge dismissed the appeal.

The Hearing

11. At the hearing before me on 9th July 2018, there was agreement between Mr Duffy, representing as Senior Home Office Presenting Officer, the Respondent Secretary of State, and Mr Jafferji, Counsel on behalf of the Appellant that, the judge had erred in law. Mr Duffy submitted that ten years’ lawful residence is a threshold which implicitly accepts that private life is engaged, and the Rules make specific allowance for this. Had the Secretary of State not wished to make such an allowance, she would not have granted a human rights appeal in the Rules. It is actually an indication that ten years’ residence engages Article 8 and it was therefore incorrect for the judge to state that the Appellant had not demonstrated that he had a private life in the UK that engages Article 8(1) at all as she had done at paragraph 23.
12. Moreover, the determination was not adequately reasoned because it was recognised by the judge that there was “a wealth of evidence in relation to his TOEIC test much of which I found to be credible and persuasive” (paragraph 24), when it came to the only issue before the judge, namely, whether the Appellant had exercised deception in procuring his TOEIC test.
13. Mr Jafferji agreed but went on to say that the judge had been side tracked into consideration of Article 8 when the only issue was the Appellant’s deception, after having shown uncontested evidence of his ten years’ lawful residence in the UK, in relation to his TOEIC test. The ten years’ lawful residence was enough to engage Article 8 and it complied with what was stated in the Immigration Rules. Article 8 was never an issue. The issue had always been whether the Appellant had exercised deception.
14. In the circumstances he asked that, given that the judge had accepted that there was “a wealth of evidence in relation to his TOEIC test” much of which the judge had found to be “credible and persuasive”, that I make a finding of an error of law and allow the appeal. Mr Duffy submitted that this would not in the event be possible to do because the judge had not even explained what this evidence was and had then failed to go on to say which parts of this evidence she had found to be “credible and persuasive”. In the light of this, it would not be correct to allow the appeal on the basis of evidence, the nature of which had not been explained by the judge.
15. There is force in what Mr Duffy submits. Accordingly, although I find on the basis of the submissions before me, that the judge had erred (pursuant to Section 12(1) of TCEA 2007) materially in coming to the decision that she has done, I can only make a finding of an error of law, but not proceed to remake the decision, so as to allow the

Appellant's appeal in the way that Mr Jafferji submits. I find that the judge arguably applied too high a test when finding that the Appellant had not established private life under Article 8. The judge failed also to make a finding whether the Appellant had practised deception in the earlier application for leave to remain by presenting an ETS certificate in the English language.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed to the extent that it is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge James pursuant to Practice Statement 7.2(a).
17. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

3rd August 2018