



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-005669
First-tier Tribunal No: HU/50850/2021
IA/05843/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 March 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Mohammad Farhan Iqbal
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms E Daykin, counsel instructed by ATM Law Solicitors
For the Respondent: Ms S Cuhna, Senior Home Office Presenting Officer

Heard at Field House on 2 February 2023

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Tozzi heard on 23 May 2022.
2. Permission to appeal was granted by Upper Tribunal Judge Canavan on 12 December 2022.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

Background

4. The appellant first entered the United Kingdom on 11 May 2005 with entry clearance as a visitor. After his visa expired on 3 November 2005, the appellant remained in the United Kingdom without leave. He came to the attention of the authorities on 24 June 2013 when he was arrested for immigration offences. The appellant made a human rights' claim on 2 August 2013, after having been notified that he was liable to removal from the United Kingdom. That application was refused and certified as clearly unfounded. From August 2013, onwards the appellant made a series of applications under the Immigration (European Economic Area) Regulations 2016 which were either rejected or refused. Several attempts to remove the appellant were thwarted by judicial review applications which were generally unsuccessful, except for the last one which was settled by consent, with the respondent agreeing to reconsider the appellant's circumstances and give an in-country right of appeal if the application remained refused. The appellant's case was refused on reconsideration by way of a decision dated 6 February 2017. The appellant's appeal against that decision was dismissed and his appeal rights were exhausted as of 10 July 2019. On 18 July 2019, the appellant made a further human rights' claim which was refused on 20 May 2020. It is the decision of 20 May 2020 which is the subject of this appeal.
5. The appellant's human rights claim was based on him providing personal care for an Italian national (Mrs C) as well as the appellant's private life. In short, the decision letter noted that the appellant did not claim to enjoy a family life in the United Kingdom, that he had provided no evidence that he was Mrs C's carer or that there was no-one else who could care for Mrs C, that he did not meet the requirements of the Immigration Rules in relation to his private life and specifically there were no very significant obstacles to his integration in Pakistan.

The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, the appellant and Mrs C gave evidence, with the latter being treated as a vulnerable witness. It was argued on the appellant's behalf that his relationship with Mrs C amounted to family life and that she had become increasingly dependent on the appellant since the previous appeal. It was conceded that the appellant could not meet the requirements of the Immigration Rules. In dismissing the appeal, the judge took the findings of First-tier Tribunal Judge Mitchell as the starting point, noting that it was found that there was a friendship between the appellant and Mrs C and Judge Mitchell had remarked on the lack of reliable evidence of Mrs C's care needs. Judge Tozzi did not accept that there was a relationship akin to mother and son and concluded that the appellant's removal would not result in unjustifiably harsh consequences for either the appellant or Mrs C.

The grounds of appeal

7. There are two grounds of appeal. Firstly, it was submitted that the judge failed to provide adequate reasons for material findings. Secondly, it was contended that there was procedural unfairness in the judge not raising her concerns during the hearing so that they could be addressed by the appellant.
8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

The nature of the appellant's caring relationship with an Italian citizen who is resident in the UK has been considered on several occasions in the last 10 years. Many of the judge's findings were likely to be open to them to make. The grounds largely amount to disagreements with the findings, and where it is asserted there was procedural unfairness, fail to identify what evidence the appellant might have given that could have been capable of making a material difference to the outcome of the appeal.

It is open to a judge to make findings on the face of the evidence without each and every observation needing to be put to a witness. However, it is at least arguable the evidence pointing to the possibility that the appellant did not live at the address with Mrs Calder as claimed had the potential to be sufficiently damaging to the appellant's claim that fairness might have required him to be given an opportunity to respond to the point. Although the rest of the points made in the grounds are weaker, I do not limit the grant of permission. The appellant will be expected to explain what evidence he could have given that might have made a material difference to the outcome of the appeal had the issue been raised with him at the First-tier Tribunal hearing.

9. The respondent did not file a Rule 24 response

The hearing

10. At the outset, Ms Cunha accepted that the First-tier Tribunal fell into procedural error in failing to raise the concerns as to the appellant's address at the hearing. She argued that this was not a material error owing to the previous findings of First-tier Tribunal Judge Mitchell. Ms Daykin relied on the grounds of appeal as well as her skeleton argument. Reference was made to the appellant's supplementary witness statement which addressed Upper Tribunal Judge Canavan's comments as to what evidence he could have given had he had the opportunity. I heard submissions from Ms Cunha and a brief response from Ms Daykin. At the end of the hearing, I informed the parties that the decision of the First-tier Tribunal contained material errors of law and was set aside with no preserved findings. After some discussion as to the future venue of any rehearing, I decided that given that the appellant had not had a fair hearing, the matter would be remitted to the First-tier Tribunal. I give my reasons below.

Decision on error of law

11. At [55] the judge concluded that the appellant was in contact with his family in Pakistan owing to inconsistent replies being given by the appellant and his witness Mrs C, on the topic. There was no inconsistency on the evidence before the judge. The appellant was asked if he was in contact with his family in Pakistan, whereas Mrs C was asked if the appellant had any family in Pakistan. These are obviously different questions. I therefore accept that the judge failed to give sustainable findings for concluding that the appellant would have the support of his family on returning to Pakistan. This point is material to an assessment of the appellant's credibility as well as to the extent of his private life, given that the appellant left Pakistan nearly eighteen years ago.
12. The judge concluded that the appellant had exaggerated Mrs C's dependency on him because she found that the injury to his elbow meant that any physical

assistance he could provide was limited. Apart from the fact that the approach of the judge was procedurally unfair in that she did not ask the appellant to address this concern, there was no evidence before the judge to show that the nature of the injury would have prevented the tasks Mrs C stated the appellant performed.

13. At [57] the judge found that the evidence of Mrs C was vague, yet there is no indication as to what aspects of her evidence were vague. It follows that this part of the ground is made out.
14. Lastly, as conceded by Ms Cunha, the judge erred at [62-64] in failing to inform the appellant as to her concerns as to the appellant's address. This was a material error in that the judge placed weight on this matter in coming to her conclusions.
15. As can be seen from the appellant's recent witness statement, he has been able to provide detailed responses which address the judge's concerns. I find that the above-mentioned errors, when considered cumulatively, render the decision of the First-tier Tribunal unsafe.
16. In deciding whether to retain the matter for remaking in the Upper Tribunal, I was mindful of statement 7 of the Senior President's Practice Statements of 25 September 2012. There was some indication from updated evidence provided prior to the error of law hearing that the circumstances of Mrs C have changed and not for the better. Taking into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of his human rights appeal at the First-tier Tribunal, I reached the conclusion that it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Tozzi.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 February 2023