



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001494

First-tier Tribunal No: PA/51525/2020
IA/02643/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MS
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented

For the Respondent: Mr. C. Avery, Senior Home Office Presenting Officer

Heard at Field House on 23 May 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Khawar (the "Judge"), dated 15 March 2024, in which he dismissed the appellant's appeal against the respondent's decision to refuse his protection and human rights claim. The appellant is a national of Bangladesh who made fresh submissions claiming asylum on grounds of his political opinion.
2. Permission to appeal was granted by First-tier Tribunal Judge Dainty in a decision dated 9 April 2024 as follows:

"The grounds aver that the judge relies disproportionately on the previous determination. It is said that the passage of time (6 years) and the amount of time having resided in the UK (nearly 20 years) justified a departure from the first determination. Secondly it is said that the judge erred at [53] in finding that the family and private life claims (art 8/276ADE) were not pursued in this appeal. They were and this was set out in the ASA. As such the judge has not made any findings under 276ADE or art 8 outside the rules (which the grounds say are meritorious).

There is no arguable error of law in the approach to the first determination/Devaseelan. The judge was clearly aware that it was a starting point and it would be open to him to depart from it where reliable and pertinent new evidence were placed before him but on analysis of the new evidence he did not find that any of it justified a departure from the first determination and he has given reasons for such.

There does however appear to have been an arguable error of law in failing to deal with the private life/art 8 matters, which were included in the further submissions, skeleton argument and there is no reference to any concession by the representative that they were no longer pursued. In view of the amount of time since entry into the UK substantially more reasons than the bald refusal would have been required to dismiss the private life claim. Therefore permission is partially granted - in respect of the private life aspects of the appeal."

3. There was no Rule 24 response.

The hearing

4. The appellant is no longer legally represented, although he was represented when the application was made. He attended the hearing together with a friend. His English is not very good, but his friend was able to understand fully and assisted when the appellant did not. In the circumstances and given the nature of an error of law hearing, I considered that it was in the interests of justice to proceed.
5. The grant of permission is limited to the Judge's consideration of Article 8. The decision on the appellant's asylum claim remains unchanged, as I explained to the appellant at the hearing.
6. I reserved my decision.

Error of Law

7. It was submitted by Mr. Lawson that there was no indication in the decision that Article 8 had been pursued. He submitted that the application should have been backed up with a statement from the appellant's representative to confirm that Article 8 had been pursued at the hearing.

8. The appellant said that his private life in the United Kingdom had been discussed at the hearing. His cousin had attended and had given evidence.
9. I have carefully considered the documents provided by the appellant in support of his fresh submissions. As stated in the grant of permission, the fresh submissions include submissions on Article 8. Together with his fresh claim the appellant provided letters from his cousin and from friends. The skeleton argument also submitted that the appeal should be allowed on Article 8 grounds.
10. Under the heading “Procedural”, the Judge states that the appellant and his cousin gave oral evidence [7]. At [8] the Judge refers to the appellant’s skeleton argument. There is no reference in this section of his decision to the skeleton argument being amended so as to withdraw the appeal on Article 8 grounds.
11. At [16] the Judge expressly states that the appellant’s case is that “his removal would constitute a breach of the Asylum Convention/Human Rights Convention/Articles 2, 3 and 8 of the ECHR”. At [24] the Judge sets out what the appellant must show in relation to Article 8, and at [25] refers to section 117B of the 2002 Act.
12. At [53] the Judge states:

“The appellant’s family and private life claims were not pursued during this appeal and in any event, I find there is no breach of his article 8 ECHR human rights and there are no very significant obstacles to his return under paragraph 276 ADE of the Immigration Rules.”
13. I find that this contradicts the earlier part of the decision where the Judge has referred to the fact that the appellant has appealed on Article 8 grounds. I accept that I have no statement from the appellant’s representative to confirm that he pursued Article 8 at the hearing, but the appellant is no longer represented, and all of the documents before me indicate that the appellant brought his appeal on Article 8 grounds as well as on asylum grounds. I find that the Judge’s failure to give proper consideration to the appellant’s Article 8 claim is a material error of law.
14. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

“(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.”
15. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). I find that no findings have been made in relation to the appellant’s private life under Article 8, and he has effectively been deprived of a fair hearing. Therefore, it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

16. The decision of the First-tier Tribunal involves the making of material error of law and I set the decision aside in relation to Article 8.
17. The findings in relation to the appellant's asylum appeal are preserved.
18. The appeal is remitted to the First-tier Tribunal for consideration of the appellant's Article 8 claim only.
19. The appeal is to be heard at Taylor House.
20. An interpreter in the Bengali (Sylheti dialect) is to be booked for the hearing.
21. The appellant is no longer represented, and it is therefore necessary for the First-tier Tribunal to ensure that all correspondence is sent to him directly, and that he is able to access the necessary systems for the purposes of preparing for his appeal.
22. The appeal is not to be listed before Judge Khawar.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
2 June 2024