



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: HU/13097/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On: 12 August 2021**

**Decision & Reasons  
Promulgated  
On: 3 September 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**ZAHID AMIN**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms G Brown, instructed by Farani Taylor Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. A face to face hearing was not held because it was not practicable or necessary and all issues could be determined in a remote hearing.

2. The appellant is a citizen of Pakistan, born on 1 January 1983. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal.

3. The appellant claims to have entered the UK initially in 2005, although the respondent has no record of that. He was granted a visit visa on 1 October 2009, valid until 1 April 2010, and claims to have entered the UK again in November 2009. He overstayed his visa. On 26 April 2013 he applied for leave to remain on family and private life grounds on the basis of a relationship with Ramona Mioara Motorgeanu, but that application was refused on 22 June 2013 without a right of appeal. On 2 December 2013 the appellant was stopped by the police for cycling on the pavement and he was arrested on suspicion of immigration offences and served with removal papers as an overstayer. On 24 February 2014 he claimed asylum and on 11 March 2014 his claim was refused. He subsequently informed the authorities that he wished to withdraw his claim and buy his own return ticket and on 9 April 2014 he made a voluntary departure from the UK.

4. On 9 November 2018 the appellant was married in Pakistan to his current spouse, Ameena Tahreem Akram, a British citizen whom he had met when he was living in the UK in around 2014, and on 29 November 2018 he applied for entry clearance to settle with her in the UK. His application was refused on 26 February 2019 under the suitability provisions of the immigration rules, on the ground that he did not have a valid TB clearance certificate from an approved source. He then submitted a further application for entry clearance on 26 March 2019 to join his spouse, but that was also refused, on 19 June 2019.

5. The basis for that refusal decision was that the respondent was satisfied that the appellant had previously contrived in a significant way to frustrate the intention of the immigration rules by overstaying and using deception in an application for leave to remain. With regard to the latter, the respondent noted that the appellant had previously declared a number of different identities when submitting applications for leave to remain and had previously provided passports and supporting application forms under the name of Ameen Zahid, date of birth 24 or 29 December 1983, whereas his passport submitted for the current application was in the name of Amin Zahid born on 1 January 1983. The respondent was not satisfied that there was satisfactory evidence of the appellant's identity and refused his application under paragraph 320(3) of the immigration rules. His application was also refused under paragraph 320(11) of the rules and his application failed under the suitability provisions under section S-EC of Appendix FM on the same basis. The respondent was otherwise satisfied that the appellant met the eligibility requirements of the immigration rules, but considered there to be no exceptional circumstances rendering refusal a breach of Article 8.

6. The appellant appealed against that decision. In his grounds of appeal he asserted that he had not used 'a number of different identities'; that he had never had a passport with the name Zahid Ameen DOB 24 or 29 December 1983; and that his previous application, which was refused on the basis that he

did not have a valid TB clearance certificate from an approved source, did not raise any issue about his identity. The refusal decision was upheld by an entry clearance manager in an ECM Review on 18 October 2019.

7. The appellant's appeal was then heard by Judge Bennett in the First-tier Tribunal on 18 December 2020. At the time of the hearing the sponsor, the appellant's wife, was with the appellant in Pakistan and the appeal was heard remotely, via CVP. The respondent was not represented at the hearing and the appellant had no legal representative. The appellant gave evidence in English as there was no interpreter available for him, and the judge noted that his level of English was poor. The appellant's evidence, as recorded by the judge, in explanation for the different name and date of birth, was that the application he had made in April 2013 had been made by a friend on his behalf and that his friend had given that spelling of his name and date of birth for no apparent reason. As for his asylum claim made in 2014, that had been made on the advice of a friend who had told him what to say. The judge also heard from the sponsor who had no problem speaking in English and whose evidence was substantially in accordance with that of the appellant. She explained that the notice of hearing had been received whilst she was visiting her husband in Pakistan and so she had extended her stay there. She claimed that she would be unable to live in Pakistan as she had never lived there and had no family there, she would not be able to find work there, her Urdu was limited and she would not feel safe there. As for the matter of the appellant's different identity, she gave the same account as the appellant and said that she did not believe that he had ever had a passport showing his date of birth as 24 December 1983.

8. The judge accepted the immigration history provided by the appellant. With regard to the appellant's account of how the date of birth 24 December 1983 arose, the judge considered that that demonstrated that he had been content to submit claims which he did not believe to be true. The judge found further that there was no substance in the appellant's asylum claim and that it had been spurious and untrue. The judge noted that the respondent had provided no evidence of a passport in the name of Zahid Ameen DOB 24 December 1983 having been submitted with the appellant's application in April 2013, but he concluded that such a passport must have been submitted as the application would otherwise have been rejected as invalid. He concluded that the application made in April 2013 was spurious and without merit and substance. Since he was satisfied that the other passports produced by the appellant were genuine and included the appellant's genuine identity details, the judge did not accept that the current application failed under paragraph 320(3). However, he was satisfied that the refusal under paragraph 320(11) was properly made on the basis of the appellant having previously contrived in a significant way to frustrate the intention of the immigration rules by overstaying for just over 4 years and using deception in his application for leave to remain in April 2013 and his asylum claim in February 2014. For the same reasons he found that paragraph S-EC.1.5 of Appendix FM applied. The judge was satisfied that the sponsor was a credible witness and was not linked to the deception herself and was satisfied that their relationship was genuine and subsisting. However he

did not accept that the refusal of entry clearance would result in unjustifiably harsh consequences for the appellant or the sponsor and was therefore not satisfied that there were any exceptional circumstances outside the rules for the purposes of Article 8. The judge accordingly dismissed the appellant's appeal.

9. The appellant sought permission to appeal the decision on the following three grounds: firstly, that the hearing was procedurally unfair and in breach of natural justice because the appellant had not anticipated giving oral evidence and had had no prior notice that he would be doing so and that his English was not sufficient to give evidence without an interpreter; secondly, that the judge had reached conclusions which were not open to him on the evidence, such as the conclusion that the appellant's asylum claim was false and that he had previously submitted a false passport; and thirdly that the judge had materially misdirected himself in his assessment of GEN.3.2 of Appendix FM when considering the matter of 'unjustifiably harsh consequences'.

10. In support of those grounds, the appellant provided a statement confirming that he had not been expecting to give oral evidence himself and that he did so only because the judge, when he discovered that he was with the sponsor in Pakistan, said that he could speak too. He stated that he had struggled to answer the questions because of his level of English. He stated further that the basis for his application made in April 2013 was genuine, that the basis for his asylum claim was genuine and that he had never had a passport in the identity of Zahid Ameen DOB 24 or 29 December 1983.

11. Permission was initially refused in the First-tier Tribunal on the (apparently erroneous) basis that there were no grounds of appeal attached to the permission application. However permission was subsequently granted by the Upper Tribunal on a renewed application, on 12 April 2021, primarily on ground one, whilst not excluding the second and third grounds. The respondent provided a rule 24 response opposing the appeal and the appellant, in turn, submitted a reply under rule 25.

12. The matter then came before me for a remote hearing.

13. Ms Everett indicated to me that the respondent was neutral in the matter in regard to the first ground and she referred me to the rule 24 response where it was stated that it was for the Tribunal to consider whether it was satisfied that the proceedings had been fair. She conceded that if the Tribunal had concerns, then the decision had to be set aside. In light of Ms Everett's concession and my own expression of concern about the proceedings before Judge Bennett, Ms Brown simply relied upon her rule 25 response and skeleton argument.

14. It seems to me that there are clear procedural unfairness issues arising from the appeal having proceeded in the circumstances that it did, given the appellant's limited level of English language and the lack of an interpreter. Whilst the respondent's Rule 24 response asserts that the appellant made the

decision himself to participate in the proceedings and did not request an adjournment for an interpreter, I accept that in the absence of a legal representative it is understandable that he felt under pressure to give evidence in the circumstances described by the sponsor in her statement of 11 June 2021. Furthermore, given the judge's adverse findings about the nature of the appellant's previous application in April 2013 and his asylum claim in 2014, it cannot be said that his difficulty in providing oral evidence is immaterial. That is the point made in the second ground of appeal and I find merit in the assertions made in that regard.

15. For all those reasons I accept that there are justified concerns about the fairness of the hearing before Judge Bennett and that the grounds are made out in that respect. In the circumstances there is no need to consider the third ground. Accordingly, I set aside Judge Bennett's decision in its entirety. In such circumstances, given the nature of the errors in the decision, the appropriate course is for the case to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge.

## **DECISION**

16. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Bennett.

Signed: S Kebede

Upper Tribunal Judge Kebede  
2021

Dated: 12 August