ONE PUMP COURT

Barrister

AHMED OSMAN

Email: ao@onepumpcourt.co.uk

Call: 2015

Specialist in

Housing & Community Care
Personal Immigration
Public Law
Modern Slavery & Trafficking Team

Experience

Ahmed joined chambers in 2019 and practices within the immigration and housing teams. Ahmed provides advice and represents clients in a range of immigration and asylum matters including applications for bail, statutory appeals in the First-tier Tribunal and Upper Tribunal and applications for judicial review. Ahmed also represents clients in a range of housing matters including in claims for possession, housing disrepair and unlawful eviction.

Before coming to the Bar, Ahmed worked as an IAAS Level 2 accredited Senior Caseworker at the

immigration firm Lawrence Lupin Solicitors. In that role, Ahmed represented clients in their asylum and immigration matters assisting clients with their asylum applications, bail applications and statutory appeals. He also represented clients in applications for judicial review which included challenges to the lawfulness of their detention. He has experience assisting vulnerable individuals having conducted asylum applications through the Detained Asylum Casework process and having represented clients through the Legal Aid Duty Advice Scheme at Immigration Removal Centres.

Prior to that, Ahmed was a Volunteer Caseworker at Bail for Immigration Detainees (BID) working in the separated families project which involved assisting with bail applications for individuals separated from their families in immigration detention. Ahmed also interned at Joint Council for the Welfare of Immigrants (JCWI) assisting the casework department with strategic casework.

Ahmed also volunteered as a caseworker at the National Centre for Domestic Violence (NCDV) helping victims of domestic violence and abuse obtain emergency injunctions. He has also represented individuals in their social security appeals by volunteering at the Free Representation Unit (FRU).

View Ahmed's Privacy Policy here

Education

Bar Professional Training Course (2014 – 2015), City Law School – Very Competent;

LLM in Human Rights Law (2013 – 2014), University College London – Distinction;

LLB (Hons) (2010 – 2013), City University London – First Class;

Memberships

Bail for Immigration Detainees

Joint Council for the Welfare of Immigrants

Young Legal Aid Lawyers

The Honourable Society of the Middle Temple

Languages

Somali

Awards

Benefactor scholarship from The Honourable Society of the Middle Temple

CASES

Robinson v Secretary of State for the Home Department

UKSC 11: meaning of the word 'claim' in section 82 of the NIAA 2002

In the case of Robinson the Supreme Court dealt with an issue of statutory construction namely the

meaning of the word ‘claim’ for the purposes of section 82 of the Nationality, Immigration and Asylum Act 2002 (‘the 2002 Act’). The central submission of the Appellant in this case was that the Immigration Act 2014 amendments to Part 5 of the 2002 Act rendered rule 353 of the Immigration Rules redundant. The Supreme Court did not accept that submission.

Mr Robinson was represented by Duncan Lewis Solicitors who instructed Michael Fordham QC of Blackstone Chambers, Ronan Toal of Garden Court Chambers and Catherine Robinson of One Pump Court Chambers.

Background

Mr Robinson is a national of Jamaica and came to the UK aged 7 in 1998. He was given leave to enter for 6 months and remained in the UK without leave thereafter. His aunt applied for indefinite leave to remain (‘ILR’) in 2005 under the ‘family exercise’ and Mr Robinson was a dependent to that application.

Mr Robinson was convicted of a number of robberies and these triggered deportation proceedings against him. He was given notice of liability to deportation and given the opportunity to make representations which he duly did. A deportation order was signed against him but he was given a right of appeal to the First-tier Tribunal (‘FTT’). He lodged an appeal and that appeal was based on his Article 8 private life. That appeal was dismissed and his appeal rights exhausted on 1 May 2015.

Mr Robinson, first through his representatives and then himself made further representations on 13 May 2015 and 28 July 2015. In those representations Mr Robinson informed the Secretary of State first that his then girlfriend was pregnant and due to give birth on 28 July 2015 and later that his girlfriend had given birth to his son on 26 July 2015. Both those representations were treated as applications to revoke a deportation order and were refused. Crucially the Secretary of State decided that they did not amount to a fresh claim under rule 353. These decisions were made on 23 June 2015 and 31 July 2015 respectively.

On 18 July 2015, the Secretary of State served removal directions on Mr Robinson scheduled for 9 August 2015. Mr Robinson’s solicitors lodged an appeal on 5 August 2015. The FTT declined jurisdiction on 7 August 2015 on the basis that the 31 July 2015 decision did not give rise to a right of appeal. Mr Robinson then lodged an application for judicial review on 7 August 2015 and his removal was deferred.

Mr Robinson’s central argument was that the FTT had been wrong to decline jurisdiction as the Secretary of State’s decisions did give rise to a right of appeal. This was based on the Supreme Court case of *R (on the application of BA (Nigeria)) v Secretary of State for the Home Department [2010]* 1 A.C. 444 (‘BA (Nigeria)’) where the Supreme Court found that a rule 353 decision by the Secretary of State had no effect in determining whether a ‘claim’ had been made for the purposes of section 92(4)(a) of the 2002 Act as it then was. Both the Upper Tribunal hearing the judicial review and the Court of Appeal did not accept this argument. A further appeal was lodged to the Supreme Court and permission was granted on 10 April 2018.

Judgment

Lord Lloyd Jones gave the judgment of the Supreme Court and held that the FTT had not been wrong to decline jurisdiction and that the Secretary of State’s decisions did not give rise to a right of appeal.

There were three strands to Lord Lloyd Jones' reasoning to his judgment.

The first strand was that rule 353 did continue to play a role in determining entitlement to a right of appeal after BA (Nigeria) for essentially the same reasons as given by Lord Neuberger in *R (on the application of ZA (Nigeria)) v Secretary of State for the Home Department* [2011] Q.B. 722 ('ZA (Nigeria)'). Those reasons are that BA (Nigeria) involved a case where a right of appeal had already been established and the question for the Supreme Court then was whether that appeal would be in country or out of country. It did not deal with the question of whether a right of appeal existed at all and the role that rule 353 played in that sense. Lord Lloyd Jones added that the argument that before the 2002 Act there was a need for rule 353 because there were no certification powers is misconceived as there were certification powers even in the predecessor legislation. He also added that rule 353 does have a useful role to play. Section 94 of the 2002 Act only blocks an appeal from being in country whereas rule 353 stops an appeal from being brought altogether. Section 96 only stops an appeal from being brought if the ground relied upon could have been raised in an earlier appeal whereas rule 353 is not limited to that ground alone.

The second strand was that the Immigration Act 2014 amendments to Part 5 do not impact rule 353's continued role in determining a person's entitlement to an appeal. This is because the fact that the list of decisions which give rise to an appeal has changed does not mean the structure of section 82 has changed. Lord Lloyd Jones puts it as follows at paragraph 60:

> *The appellant is not assisted by the fact that under the amended section 82 there is no longer a requirement to establish an "immigration decision" within the list previously set out in section 82(2). In fact, the contrary is the case. A decision to refuse to revoke a deportation order was formerly an "immigration decision" under section 82(2)(k) and therefore gave rise to an in-country right of appeal, subject to the possibility of certification, but this is no longer the case. The 2014 amendments limit immigration appeals to circumstances in which there has been a refusal of a protection claim or a human rights claim, or where protection status has been revoked. (For present purposes I will concentrate on human rights claims.) However, the structure and operation of section 82 remain unchanged. Under the amended section 82(1) a person may appeal to the tribunal where the Secretary of State has decided to refuse a human rights claim made by him, but this does not relieve that person of the burden of establishing that the refusal was in response to a valid claim. The definitions in Part 5 do not address this question and the answer will depend on the application of the Onibiyo line of authority. Onibiyo, Cakabay, ZA (Nigeria) and VM (Jamaica) establish that there will only be a human rights claim to be determined if further submissions are considered to amount to a fresh claim. Rule 353, in turn, is directed at the manner in which a court should approach that prior question. Under the post-2014 provisions it remains the case that if there is no claim, there is no appealable decision.*

The third strand is that Parliament's intention in enacting Part 5 of the 2002 Act and in making the amendments to Part 5 in the Immigration Act 2014 was not to eliminate the role rule 353 plays in determining whether a right of appeal exists. Lord Lloyd Jones found support for this in the fact that Parliament has not repealed or amended rule 353 since introducing Part 5 of the 2002 Act, that Parliament has approved subsequent amendments of the Immigration Rules which included rule 353,

that Parliament enacted section 53 of the Borders, Citizenship and Immigration Act 2009 which is on the express basis that rule 353 is still in force and finally that rule 353 has been amended to take account of the 2014 Act amendments to Part 5.

Commentary

The point raised by the Appellant in this case was a difficult one. I suspect that judges acutely aware of the principle of finality of litigation would have found it hard to approve a system which allowed a person to bring claim after claim on the same basis and possibly on the same evidence and for that to give rise to an appeal each time with the consequent delay that it would have on the final resolution of the claim. The answer of the Appellant of course was that the Secretary of State has a range of certification powers to guard against abuse and a further remedy against this lies in bringing into force section 12(3) of the Immigration, Asylum and Nationality Act 2006 which would have amended the statutory definition of human rights claim to only include second claims which passed the rule 353 threshold.

However I think the judgment misunderstood the Appellant's case and failed to deal with it properly. The Appellant's case was that whether or not a claim had been made did not matter when Part 5 was originally brought into force because what generated a right of appeal was not whether a valid claim had been made but in fact whether a relevant immigration decision had been made by the Secretary of State. Therefore the interpretation posited by the Appellant of ZA (Nigeria) was that the role of rule 353, once Part 5 was originally brought into force, was that it was the mechanism by which the Secretary of State would decide whether to make a relevant immigration decision which would trigger a right of appeal. Therefore reference in paragraph 60 of the judgment of 'under the post 2014 provisions it remains the case that if there is no claim, there is no appealable decision' misunderstands the fact that whether or not something amounts to a claim is not what triggered a right of appeal before the 2014 Act amendments but whether a relevant immigration decision had been made. The case really centers on the correct interpretation of ZA (Nigeria).

The judgment also fails to deal with the issue that 'claim' for the purposes of section 82 seemingly now has a dual meaning because rule 353 does not apply to human rights claims made overseas. This was a point raised at the hearing but it is conspicuously absent from the judgment.

This long running series of litigation on this point has come to a conclusion on a shaky foundation. For Mr. Robinson it means that he has no right of appeal to the decisions made in 2015 but it is open to him to put forward further submissions and engage with the rule 353 process.

Related Barristers:

Ahmed Osman

Catherine Robinson

Safi and others (permission to appeal decisions) [2018] UKUT 388 (IAC): Construing grants of permission

Ahmed Osman of One Pump Court summarises the recent Upper Tribunal decision of Safi and others. Ahmed is undertaking pupillage in the immigration and housing teams. He will be available to accept instructions as of April 2018.

In the case of Safi and others the Upper Tribunal dealt with the issue of the construction of permission decisions. Clearly frustrated at having to spend time on this point, the Upper Tribunal laid down conclusive guidance on the form that permission decisions should take in the future.

Background

The case concerned 9 Afghan asylum seekers who famously hijacked a commercial aircraft in 2000 and forced the pilot to fly it to the UK in order to escape the Taliban. They claimed asylum in the UK and after a lengthy delay, decisions were made in respect of their asylum claims.

They had succeeded in 2013 in respect of their claims that removal from the UK would constitute a breach of their rights under Article 3 ECHR. However the issue of whether they were entitled to refugee status was determined against them on 7 July 2015 on the basis that their actions in hijacking the plane meant they were excluded from refugee status under Article 1F(b) of the Refugee Convention for having committed a serious non-political crime.

They all applied for permission to appeal to the Upper Tribunal on a point of law against that determination on 4 grounds. One of the appellants named Khalil Ullah also advanced a fifth ground of appeal. The First-tier Tribunal granted permission to appeal to the Upper Tribunal. However in so doing, the judge who granted permission stated that ground 2 and 3 of the Appellants' grounds were not arguable but that ground 1 was arguable. The Secretary of State therefore sought to argue that the Upper Tribunal did not have jurisdiction to consider the other grounds of appeal that had been advanced as the First-tier Tribunal had only granted permission on ground 1.

Judgment

The matter came before Lane J, President of the Immigration and Asylum Chamber of the Upper Tribunal and Upper Tribunal Judge Dawson. Lane J giving the judgment of the Upper Tribunal found that permission to appeal had been granted on all grounds and that permission had not been limited to specific grounds as contended by the Secretary of State.

This was because Blake J in Guidance Note 2011 No.1 entitled 'Permission to appeal to the UTIAC' stated that if permission was to be granted on limited grounds then this should be expressly and precisely articulated. This approach was supported by the case of Ferrer (limited appeal grounds: Alvi) [2012] UKUT 304 (IAC). This is in order to avoid time being spent on construing the permission decision and to enable the Tribunal staff and the parties to be plainly aware if permission had been granted on only limited grounds. It also impacts whether or not there is a need for the proposed Appellant to exercise their right to apply to the Upper Tribunal directly for permission on the grounds which had been unsuccessful.

Furthermore the case of Secretary of State for the Home Department v Rodriguez; Mandalia and Patel v Secretary of State for the Home Department [2014] EWCA Civ 2 ('Rodriguez') established that if there is ambiguity in the permission decision from the language of the reasons then that is to be resolved in the favour of the person that applied for permission.

Therefore taking the above principles Lane J held that the grant of permission was not limited because the decision section read that permission had been granted without any limitation and that applying Rodriguez the reasons section of the permission decision was ambiguous. This was because nothing had been said about ground 4 and Khalil Ullah's ground 5 which suggested that the judge was merely indicating to the Upper Tribunal which grounds should be concentrated upon rather than it being an

explicit limitation of the grant.

The Secretary of State also argued that given that the judge granting permission held two grounds to be unarguable, permission could not have been granted on those two grounds. Lane J rejected that argument. He held that section 11(1) of the Tribunals, Courts and Enforcement Act 2007 allowed a judge to grant permission to appeal on a point of law and that this was not limited to only arguable errors of law. The judge can grant permission even if the judge believes that there is no arguable error in the First-tier Tribunal's determination so long as the judge is of the opinion that the point of law being raised is of such significance that the Upper Tribunal should be seized of the matter.

The Upper Tribunal then set out further principles to be followed in the future regarding permission decisions which are as follows:

If a grant of permission is limited than this must be absolutely clear.

The limit of the grant of permission must be set out in the decision section of the permission decision and not in the reasons section which should only be used for explaining why permission had been granted or refused as the case may be.

It is only likely to be in very exceptional circumstances that the Upper Tribunal will entertain submissions on whether a grant of permission was limited where on its face permission had been granted without express limitation.

Commentary

This is a welcome decision as it is sets out that in future a permission decision must state expressly in the section of the standard form document whether permission has been granted with or without limitation. Essentially, if the Tribunal states in that section that "permission to appeal is granted", and then goes on in the 'reasons for decision' section to express a negative opinion on certain grounds, this will not inhibit an Appellant from advancing all grounds at the hearing before the Upper Tribunal. This approach avoids time being needlessly spent on arguing about the scope of the appeal to the Upper Tribunal. It also avoids the injustice in the case of an unclear grant of permission of the Appellant missing their opportunity to apply for permission to appeal directly to the Upper Tribunal on those grounds where permission had been refused. This may be especially true for litigants in person who would more likely be confused in a case where the decision section says permission is granted and the reasons section then goes on to limit that grant of permission.

The guidance note of Blake J also noted that on a practical level permission on limited grounds should be avoided as grounds which the judge considering permission does not consider arguable would be of use to the judge hearing the appeal in the Upper Tribunal. Lane J added that granting permission on limited grounds would also delay proceedings as the case would not be listed until the party applying for permission is given the opportunity to apply for permission direct to the Upper Tribunal on those grounds which had been refused permission. Let's hope that this advice is heeded by judges of the First-tier Tribunal.

As the determination was only recently promulgated, Appellants will need to be alive to routine arguments put forward by the Respondent that they cannot argue certain grounds because of opinions expressed in the 'reasons for decision' section. Plainly this position cannot be sustained without doing violence to the language of the headnote in Safi.

Ahmed Osman

Related Barristers:

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