



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/09190/2013

THE IMMIGRATION ACTS

Heard at Bradford

On 12 May 2014

Determination

Promulgated

On 21 July 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

SAMEER ASHRAF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C T Durham Hall, instructed by RKS Solicitors
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Sameer Ashraf, was born on 22 January 1986 and is a male citizen of Pakistan. On 30 March 2013, a decision was made to refuse to grant the appellant entry to the United Kingdom as the spouse of Irran Akhtar (hereafter referred to as the sponsor). The appellant appealed to the First-tier Tribunal (Judge Henderson) which, in a determination promulgated on 12 February 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Judge Henderson found the appellant could not comply with the Immigration Rules. Part of her reason for doing so was that the sponsor had failed to prove that she had a second job as claimed. The grounds of appeal take issue with the judge's findings and also with the application of *MM and Others* [2013] EWHC 1900. However, Judge Keane, granting permission in the First-tier Tribunal in a lengthy decision explains in detail why he was not prepared to grant permission in respect of the challenge to the judge's findings under the Immigration Rules and to the application of *MM*. Judge Keane went on to deal with the second limb of the grounds, namely the challenge to the judge's determination of the appeal on Article 8 ECHR grounds:

The judge's resolution of the Article 8 issue was to be found at paragraphs 24, 25, 26, 27, 28 and 30 of her determination. At paragraph 22 ... the judge had found the appellant and sponsor were party to a genuine relationship stating as she did, 'my conclusion is that this is an arranged marriage and that the couple are in a genuine relationship following an arranged marriage and that they have the intention to live together permanently as husband and wife.' Nowhere in her determination did the judge consider the circumstances of the sponsor nor did she consider whether it would be reasonable for the sponsor, a British citizen who had been born in the United Kingdom, to abandon her life in the United Kingdom in order to settle in Pakistan for the purpose of carrying on family life with the appellant. Such a case had been canvassed at paragraph 13 of the sponsor's witness statement and in failing to take into account such evidence and to arrive at findings in respect of the sponsor the judge made an arguable error of law but for which the outcome of the human rights appeal might have been different. The application for permission is granted but is limited to such a ground.

3. I made it clear to Mr Durham Hall, for the appellant, that I did not consider that permission had been granted to challenge the Immigration Rules decision or the application of *MM*. I heard submissions in respect of Article 8 ECHR only.
4. The relevant passage of the sponsor's witness statement reads as follows:

I am settled in the UK and my entire family is here; I was born here and I cannot live elsewhere. I am employed here and have spent my entire life here; we have no resources or employment opportunities in Pakistan. My husband and I have been forced to live apart from one another even though we satisfy all the requirements. It would be disproportionate to expect us to live in Pakistan; we have been separate for a long period of time and any further separation would also be disproportionate.

5. Mr Durham Hall, in his skeleton argument, relied in part on the authorities of *VW (Uganda)* [2009] EWCA Civ 5 and *Chikwamba* [2008] UKHL 40. In *VW*, the Court of Appeal considered "whether it is reasonable to expect the family [of the appellant] to leave with the appellant [to settle abroad]." [24]. Similarly, *Chikwamba* concerned the requirement imposed by the Secretary of State on an appellant living in the United Kingdom with his family to return to his country of origin in order to make an out of country

application for entry clearance. Those circumstances are not relevant in the present appeal given that the appellant remains living in Pakistan. Relevant jurisprudence (eg. *Sanade* [2012] UKUT 48 (IAC)) likewise deals with the circumstances of appellants and their families living in the United Kingdom who faced with decisions to remove them from the country. It is correct to say that Judge Henderson, having decided that she should deal with Article 8 notwithstanding the failure of the appellant to comply with the Immigration Rules at [24] then proceeded to deal in her analysis almost entirely with the application of *MM*; she did not expressly consider the impact of the immigration decision on the sponsor, a British citizen. Was she wrong to fail to do so? In all the circumstances, I have concluded that Judge Henderson did not perpetrate any error of law. Had she proceeded to deal in detail with the sponsor's circumstances (other than her employment and income position) as Mr Durham Hall argued she should have done, the result would have been the same. The appellant and sponsor have chosen to marry in the full knowledge, in order to gain admission to the United Kingdom, the appellant would have to satisfy the relevant Immigration Rules. Indeed, the sponsor in the passage of her statement which I have quoted above, indicates as much. If the appellant's arguments in this appeal are correct then it would follow that any genuine and subsisting marriage between a foreign national and a British citizen would have to result in the grant of entry clearance to the foreign national on the grounds that the British citizen sponsor could not be expected to live abroad; the requirements imposed by the Immigration Rules would thereby be rendered wholly otiose. That is not the effect of the decisions in *Sanade* and *Zambrano*. Whilst the appellant and sponsor in the present appeal may be parties to a genuine relationship any interference caused to that relationship has been of their own making because they have chosen to marry and to enter the relationship when the appellant was unable to satisfy the requirements of the Immigration Rules. Other than the relatively brief periods they have spent physically in each other's company, their enjoyment of family life has been exactly the same following the immigration decision as it was before the application for entry clearance was made. With those matters in mind, I find that Judge Henderson would have concluded that the Article 8 appeal should be dismissed even if she had carried out a more detailed analysis of the factual matrix. Indeed, I do not believe that she would have erred in law had she refrained from considering Article 8 at all following the authority of *MF (Nigeria)* and also *Gulshan* [2013] UKUT 640 (IAC).

DECISION

This appeal is dismissed.

Signed

Date 10 June 2014

Upper Tribunal Judge Clive Lane