



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/00367/2015

THE IMMIGRATION ACTS

Heard at Glasgow
On 3 November 2015

Decision and Reasons promulgated
On 9 November 2015

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ZAFAR BILAL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Hussain, of Legal & Legal, Solicitors

For the Respondent: Mrs S Saddiq, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 18 March 1989. He entered the UK as a student on 17 August 2012. He married a UK citizen on 2 April 2014. He applied on 17 October 2014 for further leave to remain as a spouse.
2. The respondent refused his application by letter dated 8 December 2014, because he and his wife did not provide documentary evidence in line with Appendix FM-SA to meet the income requirements of the Immigration Rules; paragraph EX.1 did not apply to his benefit; and there was no basis for a grant of leave outside the Rules.

3. The appellant appealed to the First-tier Tribunal. By the time of the hearing on 16 April 2015, he and his wife had a child, aged 2 months.
4. In her determination promulgated on 22 April 2015 Judge J C Grant-Hutchison found that the requirements of Appendix FM-SA had not been met (paragraph 14); that although there was now a child, it was not unreasonable to expect the child to leave the UK with his parents, nor were there insurmountable obstacles to family life continuing outside the UK (paragraph 21); that looking outside the Rules, there was nothing to be added in relation to the best interests of the child, which had already been considered at length, and so the appeal did not succeed outside the Rules either (paragraphs 29-32).
5. The grounds of appeal to the Upper Tribunal say at paragraph 3 that in relation to the "true best interests of the child, who is a British citizen" he would have a "better and brighter future" in the UK, rather than in "an unknown and unsettled environment", and that the judge failed to take into account of "the implications and true primary interests of the child."
6. Paragraph 4 of the grounds says:

"In paragraph 31 the judge incorrectly notes the appellant's wife's income being £18,662.40; the total combined and accumulated income amounts to £19,744.60. Thus if the appellant was to return himself, this would possibly mean a shortfall in the required income. Hence this could mean the appellant and his family could be parted for much longer than anticipated and thus clearly causing an insurmountable obstacle to continuing family life."
7. On 14 August 2015 a Judge of the First-tier Tribunal granted permission, observing:

"Although the earnings would meet the Rules the requisite documentation was not forthcoming ... it seems arguable ... that the judge failed to appreciate that it was joint earnings and not just the sponsor ... if ... the appellant has to give up his job and return, the family will be unable to meet the Rules on joint earnings ..."
8. Mr Hussain submitted that the judge erred as identified in the grant of permission. He said that the appellant had shown a gross income of £9,872.85, and his wife a similar amount. Together, their earnings took them above the income threshold of £18,600. The judge failed to appreciate that both required to be earning for them to meet the Rules in a future application. That meant that the case should have succeeded under paragraph EX.1, because it would not be reasonable to expect the child to leave the UK.
9. Mr Hussain accepted that there would be many similar cases where a UK citizen child was involved and the income threshold could not be met, but said there was a disproportionate outcome in this case. The best interests of the child should have been given "more weight". I asked what case had been made in the First-tier Tribunal that it would be significantly adverse to the child's best interests to live in Pakistan, rather than in the UK. Mr Hussain's response was in terms of the

appellant's wife being a UK citizen (although brought up in Pakistan, and living there until 2012) with a settled life and employment here, who hoped to gain further qualifications as a dental nurse and did not wish to be "uprooted". He said that the family would either face a long term separation, or would have to live in Pakistan. He submitted that the decision should be reversed, either under the Rules or in terms of Article 8 outside the Rules, on the basis of the best interests of the child.

10. Ms Saddiq submitted that the grounds of appeal were misleading and that there was nothing to suggest that the judge had misinterpreted the position put forward by the appellant. At paragraph 31, the judge said:

"The appellant states in his application form (D22 of the respondent's bundle) that his wife earns £18,662.40 per annum. There is no reason why his application [from Pakistan] would not succeed. He would only be parted ... until his application was approved."

11. Mrs Saddiq directed attention to the page cited of the application form, where the applicant says that his annual income is £3,028.80 and his wife's annual income is £18,662.40. Thus, he represented that his wife's income, although not vouched by the documents required by the Rules, was over the income threshold. The judge appreciated exactly the case which was before her and made no conceivable error. The grounds to the Upper Tribunal did not itemise any other split of income between husband and wife. The respondent had conceded that the income requirement was met - the point of refusal maintained in the letter and in submissions at the hearing was the lack of specified evidence (paragraph 11 of the determination). Mrs Saddiq said there was plainly no error on the point on which permission was granted.
12. As to the best interests of the child, Mrs Saddiq submitted that the grounds were only disagreement. The judge dealt thoroughly with the matter, setting out the legal approach at paragraph 16 and going into the facts at paragraphs 20, 21, 29 and 31. She made an impeccable assessment. She reached her final conclusion on the likelihood of the income threshold being met on a future application, but no complaint could be made about that, it being exactly the evidence of the appellant which led her to think so.
13. Finally, Mrs Saddiq said that even if the case had not disclosed that an application from abroad was likely to succeed, the outcome would nevertheless have been justified; but as the appellant had not suggested that outcome by his evidence, the point did not arise before the judge, and could not disclose any error now.
14. Mr Hussain in response said that it had been clarified in the witness statement provided for the hearing that for the preceding 6 months the wife earned £8,164.80, which over a year would amount to £16,329.60, short of the income threshold. The full amount could be made up only by accumulating the appellant's income. Although the shortfall might not be large, there was a possibility that the threshold could not be met if the appellant did have to return to Pakistan. It had not been shown that his wife could meet the earnings threshold without his assistance. Although she had a background of living in Pakistan, the couple had no present

connections with family members which might assist them on return and her career prospects would be jeopardised. They had no jobs or homes in Pakistan and so it could not be in the best interests of their UK citizen child to expect him to leave the country. The judge had gone wrong by referring at paragraph 31 to visits and contact through social media as an acceptable substitute for family life.

15. I reserved my determination.
16. The submissions for the respondent on the point on which permission was granted were well founded, for the reasons given. The grounds and submissions for the appellant show no error by the judge on the case before her.
17. The appellant did not have much of a case, even if it had been clearly presented as one where the judge was to consider the parties' election between long-term separation and life in Pakistan. The judge plainly and rightly thought that the disadvantages were much exaggerated. The appellant's position comes down to little more than an assertion that the income threshold of the Rules should be disregarded wherever a UK citizen child is involved. That does not answer the question posed by the Rules, or in terms of statute. No coherent case was put forward why it would be significantly adverse to the best interests of the child to be brought up in Pakistan, or what insurmountable obstacles there might be to family life in Pakistan. The judge's reasoning and findings on that point at paragraphs 16-21 and 26-31 are not shown to be flawed.
18. The final point of criticism made in the appellant's submissions was that the judge referred to the possibility of visits and contact through social media. It is well recognised that such are not acceptable substitutes for family life being carried on together in the same country, but that is not what the judge said. Her reference is to the possibility of ongoing contact while the appellant's application from Pakistan was pending. That was an entirely justifiable observation.
19. The determination of the First-tier Tribunal shall stand.
20. No anonymity order has been requested or made.



Upper Tribunal Judge Macleman

6 November 2015