



IAC-FH-AR-V1

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

Appeal Number: IA/29786/2014  
IA/29787/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 July 2015**

**Decision & Reasons Promulgated  
On 5 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**MUHAMMAD YASIR HAMEED  
MAJID IQBAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Miah, counsel, instructed by MA Consultants (London)

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This are appeals against the decision of Judge of the First-tier Tribunal Monson who, in a determination promulgated on 30 March 2015, dismissed the appellants' appeals against a refusal by the respondent to grant them leave to remain outside the immigration rules as a result of their claimed same-sex relationship.

**Background**

2. The appellants are both nationals of Pakistan. The 1<sup>st</sup> Appellant entered the UK with valid entry clearance as a student on 14 January 2010. During the currency of his leave he returned to Pakistan and re-entered on 25 September 2010 accompanied by the 2<sup>nd</sup> appellant who also entered pursuant to a validly issued student entry clearance.
3. On 18 November 2010 the 1<sup>st</sup> appellant submitted an application for a Certificate of Approval to marry a female Czech national. This application was refused on 02 February 2011 because another Certificate of Approval had already been lodged by the Czech national in relation to someone else.
4. On 20 August 2013 the 1<sup>st</sup> appellant applied for leave to remain on the basis of his same sex relationship with the 2<sup>nd</sup> appellant. On 05 July 2014 the respondent refused this application, one in which the 2<sup>nd</sup> appellant was identified as a dependent. The respondent was not satisfied that the appellants met the requirements of Appendix FM of the immigration rules, or that they had viable private life claims under paragraph 276ADE of the immigration rules. Nor was the respondent satisfied the appellants were in a genuine relationship. Although the appellants raised concerns in respect of their safety were they to be removed to Pakistan and were they to continue their relationship in public, neither made an asylum claim. The respondent did not believe removal would breach Article 8 in any event as, according to background evidence identified by the respondent, the appellants could live together as a couple, albeit discreetly.

### **The First-tier Tribunal's decision**

5. The First-tier Tribunal Judge heard evidence from both appellants and from a Mr Tariq, the landlord of the property in which the appellants resided. The Judge noted that no Article 3 claim was being advanced by the appellants. The sole ground of appeal was that the decision to remove them would breach their Article 8 family and private life rights. The Judge found that the appellants did not meet the requirements of Appendix-FM or paragraph 276ADE. The Judge noted that it was not the appellants' claim that they would be subjected to persecution or any Article 3 ill-treatment were they to live as a gay couple in Pakistan. The Judge stated that the appellants had not shown that they would not choose to live discreetly as gay men in Pakistan, as opposed to being forced to live discreetly from fear of persecution (paragraph 24).
6. The Judge was satisfied that the appellants had discharged the burden of proof that they had 'followed a gay lifestyle in the United Kingdom, and that they present to their friends in the UK as a gay couple' (paragraph 25). It is not all together clear what the Judge meant by this, but, as with the Grounds of Appeal to the Upper Tribunal and the grant of permission to appeal, I take it that the Judge was satisfied both appellants were gay.

7. The Judge was not however satisfied that the appellants were in a genuine or subsisting relationship. The Judge relied on the fact that the 1<sup>st</sup> appellant had submitted an application for a Certificate of Approval to marry a female Czech national, the evidence that accompanied that application, and inconsistencies and implausibilities in the evidence presented to him in rejecting the claimed relationship. The Judge consequently dismissed the appeals.

### **The Grounds of Appeal**

8. The Grounds argue that the Judge failed to set out the discrepancies he referred to and failed to explain why those discrepancies were material to his decision. It was further argued that the Judge erred in his Article 8 assessment, and that he failed to properly consider or apply the test in paragraph 276ADE(vi) which imposed a significant obstacles test.
9. Permission was granted on the basis that it was arguable that the Judge erred by failing to consider whether there would be 'very significant obstacles' to the appellants' reintegration as homosexuals in Pakistan under paragraph 276ADE(vi) of the immigration rules, or to have regard to the impact on their private lives as homosexuals if removed to Pakistan.

### **The hearing before the Upper Tribunal**

10. Mr Miah, who ably represented the appellants, submitted that the Judge failed to consider the impact on the appellant's private lives if removed. It was argued that it was incumbent on the Judge to have considered, in the alternative, the impact on the appellants' private lives given the Judge's acceptance that the appellants were gay. Mr Miah was at pains to point out that he was not the representative who appeared before the First-tier Tribunal and he did not have a copy of the record of proceedings as recorded by the representative. He was not therefore aware of what evidence was given by the appellants in respect of how they manifested their sexual identity in the UK, how different this was to the manner in which they manifested their sexual identity in Pakistan, whether or not they now publically displayed their affections, or what arguments were advanced by the representative in respect of the impact on their private lives as gay men in Pakistan. Mr Miah accepted that it was open to the Judge to make his factual findings in respect of the alleged relationship between the appellants. It was submitted on behalf of the appellants that they would encounter difficulty in freely manifesting their sexual identities in Pakistan, although Mr Miah accepted there was no evidence other than the appellants' statements and the determination in respect of how they would manifest their sexual identity in Pakistan.
11. Mr Tufan pointed out that the appellants placed no reliance on Article 3 or asylum. The Judge gave clear reasons as to why he was not satisfied the relationship between the appellants was genuine. At paragraph 24

of the determination the Judge noted the absence of any evidence as to whether the appellants would choose to act discreetly in Pakistan. There was no evidence before the Judge as to how the manner in which the appellants publically expressed their sexuality had altered since their entry into the UK.

## Discussion

12. I will first consider the Ground of Appeal alleging that the Judge failed to set out the discrepancies he relied on in rejecting the appellants claim to be in a genuine relationship and why they were material. At paragraph 26 the Judge relied on the 1<sup>st</sup> appellant's application for a Certificate of Approval to marry the Czech national. This application included a statement from the appellant saying he and the Czech national were in love and could not live without each other. The Judge gave sufficient reasons for rejecting the 1<sup>st</sup> Appellant's explanation for this untruth (the Judge did not find it plausible that the Czech national would have deceived the 1<sup>st</sup> appellant as her immigration status was secure and it was not credible, in these circumstances, that she would have pressurised the 1<sup>st</sup> appellant to marry her, nor was it credible that the 1<sup>st</sup> appellant would agree to marry her if they were just friends and he was in a long-term relationship with the 2<sup>nd</sup> appellant who had just arrived in the UK, allegedly to carry on that relationship). At paragraph 27 the Judge identified inconsistent evidence in respect of when and where the appellants were living, and differences in explanations given for these inconsistencies. At paragraph 28 the Judge identified inconsistent evidence between the 1<sup>st</sup> appellant and his landlord in respect of whether the Czech national lived with the 1<sup>st</sup> appellant. The Judge properly identified inconsistencies in the evidence before him and explained why he felt these inconsistencies undermined the account given by the appellants in respect of their relationship. These were conclusions the Judge was entitled to reach. I am therefore satisfied the Judge's rejection of the claimed relationship between the appellants discloses no error of law.
13. I will now consider whether the Judge erred in his consideration of paragraph 276ADE(vi). The respondent's decision was made on 05 July 2014. At this time paragraph 276ADE(vi) required, in order for leave to remain to be granted, that, assuming an applicant had lived continuously in the UK for less than 20 years, that they had no ties (including social, cultural or family) with the country to which they would have to go if required to leave the UK. It is clear that the appellants would have been entirely unable to meet these requirements as they had only entered the UK in 2010 as adults and still had family in Pakistan.
14. Paragraph 276ADE(vi) was amended with effect on 28 July 2014. This amendment removed the 'no ties' test and imposed a requirement that the applicant demonstrates there would be 'very significant obstacles to the applicant's integration into the country to which he would have

to go if required to leave the UK'. This alteration however post-dated the date of decision. There were no transitional arrangements indicating that the change in paragraph 276ADE was to have retroactive effect. The Judge was therefore fully entitled to his conclusion in respect of paragraph 276ADE(vi) as it was when the decision under appeal was made.

15. The Grounds go on to criticise the Judge's assessment in respect of the appellants' free-standing private life claims. It is argued that the Judge failed to engage in any assessment as to how the private lives of the appellants, as gay men, would be affected should they be required to return to Pakistan.
16. The difficulty with this argument is that there does not appear to have been any significant evidence before the Judge as to how the appellants, as individual gay men, manifested or expressed their sexual identity in the UK, how, if at all, this was different to the manner in which they lived in Pakistan, and how their behaviour may have been modified as a result of the time they lived in the UK such that their removal would have a disproportionate impact on their personal identity and personal integrity sufficient to breach Article 8. There was, for example, little evidence in respect of whether the appellants publically displayed affection as gay men or whether they still manifested their sexual identity discreetly in the UK. I note in this regard that the Judge stated, at paragraph 24 of his decision, that the appellants had not shown that they would not choose to live discreetly as gay men in Pakistan.
17. Although in their joint statement the appellants claimed they were able to live openly in the UK and this would not be possible in Pakistan, this was in the context of their claimed relationship, a relationship that the Judge found did not subsist. I also note that the appellants provide the respondent's Country Information and Guidance document on Pakistan in respect of Sexual orientation and gender identity. This indicated that homosexuality was illegal in Pakistan, and that it would not be reasonable for an applicant to conceal their homosexuality in order to avoid the risk of persecution. There was however no evidence before the Judge that the appellants would seek to conceal their homosexuality as a result of persecution or whether they would seek to conceal their homosexuality as a result of other factors, and how this would affect their personal identity in terms of Article 8.
18. In these circumstances I am not satisfied the Judge materially erred in his approach to the Article 8 private life claims of the appellants.

### **Notice of Decision**

**The First-tier Tribunal Judge did not make a material error of law.**

**No anonymity direction is made.**



Signed

31 July 2015

Date

Upper Tribunal Judge Blum