



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

Appeal Number: IA036132015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 June 2017**

**Decision & Reasons
Promulgated
On 17 August 2017**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**SHAH RUKH IQBAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel instructed by Solicitors' Inn
For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The subject of the challenge brought by the appellant with permission is the decision of First-tier Tribunal (FtT) Judge R C Walters sent on 14 November 2016 dismissing his appeal against a decision made by the

respondent on 12 January 2015 refusing leave to remain on private and family life grounds. The appellant's challenge has two dimensions, one procedural, one relating to the substance of the judge's reasoning. The procedural challenge is brought by Mr Iqbal in the form of an application to amend the grounds. I consider that it would be in the interests of justice to admit the amended grounds and note that Mr Duffy was afforded additional time to peruse them and then to make submissions on them.

2. The essence of the procedural ground is the contention that the judge erred in deciding the appeal on the basis that the appellant failed to meet the relevant requirements of the Immigration Rules and had not shown that the decision appealed against was disproportionate under Article 8 of the ECHR. Mr Iqbal submitted that this was an error because that matter had already been decided by FtT Judge Reid in a decision dated 24 August 2015. In that decision Judge Reid found that (1) the appellant and his wife were honest and credible witnesses on the issue of their relationship; (2) as the couple had legally married on 5 June 2014 and he was not required to show that their relationship had been subsisting for two years (as the respondent had asserted); and (3) the appellant met the requirements of Appendix FM, in particular the suitability requirement and the relationship requirement.
3. Judge Reid's decision was the subject of an appeal by the respondent who challenged not only the judge's findings on Appendix FM but also the judge's finding that the appellant had not used deception in taking an ETS test. This appeal came before Deputy Upper Tribunal Judge (DUTJ) Hill QC. In a decision dated 20 February 2016 he allowed the respondent's appeal and remitted the matter to the First-tier Tribunal for a rehearing.
4. I am not able to accept Mr Iqbal's submission, as skilfully as he deployed his arguments. His central argument was that DUTJ Hill QC had only allowed the appeal on the ETS matter. In support he pointed to passages of DUTJ Hill QC's judgment which refer to identification of an error of law on the ETS issue only; especially paragraphs 10 and 11. However, whilst it is true virtually all of DUTJ Hill QC's analysis was concerned with the ETS issue, (i) he himself correctly noted that the respondent's grounds also challenged the judge's finding on Appendix FM (see paragraph 3); (ii) he avoided any use of language indicative that he regarded the ETS issue as the sole issue: the furthest he went was to say at paragraph 3 that "[i]t is with this latter aspect [the ETS issue] that the appeal before me today has been principally concerned" ("principally" does not mean the same as exclusively); (iii) he made no specific finding to the effect that he considered the judge's treatment of the Appendix FM issue was free of legal error; (iv) his "notice of decision" contained no restriction in scope, stating mainly that "Appeal allowed. Matter remitted to the FtT for a rehearing. No findings preserved." Whilst "[m]atter" here appears to relate to the ETS issue only, the legal effect of the unqualified '[n]o findings preserved'" is that the decision of FtT Reid was treated as a nullity; (v) the bald legal fact was that the appellant could not meet the

requirements of Appendix FM in full: being an overstayer he could not possibly meet the suitability (status) requirements; indeed Mr Iqbal conceded as much. It would elevate procedural formalism over legal fact to consider DUTJ Hill QC's decision as one finding that FtT Judge Reid's decision on the Appendix FM matter was free of legal error; (vi) Mr Iqbal did not seek to rely on the procedural ground when he himself appeared before Judge Walters; and (vii) it is true that the respondent did not cross-appeal DUTJ Hill QC's decision, but there was no basis for her doing so since that decision did not determine the challenge made to Judge Reid's finding on Appendix FM.

5. I turn therefore to the appellant's substantive grounds of challenge. It is immediately apparent that they lack arguable merit. They comprise three submissions with a request that they be considered cumulatively. Each of these submissions takes issue with Judge Walters' finding that the appellant could not meet the requirements of paragraph EX.1.(b) which requires it to be shown that there would be insurmountable obstacles to family life with the partner continuing outside the UK.
6. In my judgment, each of these submissions amounts to no more than a mere disagreement with Judge Walters' findings of fact. Judge Walters had found that he did not believe the appellant's wife's evidence that she feared return to Pakistan because of threats to her life received from her ex-husband's family. He stated at paragraphs 29-30 that:
 29. I did not believe that evidence. The Appellant went back to Pakistan in 2014 and stayed there for two weeks. She stayed in the same city, Islamabad, in which her ex-husband's family live. She said that they did not know she was there.
 30. I did not accept that if the Appellant and his spouse returned to Pakistan to continue their Family Life there and relocated to a large city that her ex-husband's family would ever find that they were present in the country at all."
7. The first submission contends that when it came to assessing risk on return the judge did not appreciate the difference between visiting Pakistan for a short visit of two weeks and returning to the same city permanently.
8. The judge heard evidence from the appellant and also considered the documentary bundles submitted by both parties. Nothing in those bundles addressed the issue of whether there was a significant difference between a short visit to Islamabad and permanent stay there in terms of the potential reality of damage of harm at the hands of the ex-husband's family. The matter was at large for the judge and it was entirely open to him to consider that the appellant's wife's two week return was not indicative that she genuinely feared she was at risk from her ex-husband's family.

9. The second submission was that the judge had no evidence on which to base his conclusion that if she relocated to another large city in Pakistan the appellant's wife's ex-husband or family would not be able to locate her. This submission jars somewhat with the first in that it presupposes the ex-husband's family has the ability to trace the appellant's wife anywhere in one of Pakistan's cities even though this ability apparently hangs in suspension for a period of two weeks. In any event, it is simply a disagreement with the judge's findings. The judge was clearly entitled on the basis of the evidence and submissions to conclude as he did. There was no evidence before the judge to indicate that the appellant's wife's ex-husband's family had the wherewithal or desire to track her down anywhere in Pakistan.
10. The third submission simply reverses the burden of proof. It alleges that having accepted that the appellant's wife was receiving medical attention/treatment in the UK "there was no evidence available to the judge that she will receive similar treatment/attention in Pakistan". Absent clear evidence that the appellant's wife would be unable to access such treatment in Pakistan, the judge was fully justified in concluding at paragraph 38 that:

"The Appellant has produced no evidence that either of the drugs taken by his wife are unavailable in Pakistan. Nor has he produced any evidence that treatment for her depression and suicidal thoughts would be unavailable there."
11. A further observation to be made is that Judge Walters did not address the inability of the appellant to meet the suitability requirement of Appendix FM. That was an error, but it cannot be said to constitute a material one because he gave separate reasons why the appellant could not succeed under EX.1. (b) either or under Article 8 outside the Rules.
12. In short, the appellant's grounds lack merit and must be dismissed.

Notice of Decision

13. For the above reasons:

The FtT judge did not materially err in law. His decision to dismiss the appellant's appeal must stand.

14. No anonymity direction is made.

Signed

Date: 16 August 2017

H H Storey

Appeal Number: IA036132015

Dr H H Storey
Judge of the Upper Tribunal