



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

Appeal Number: PA/00489/2019

THE IMMIGRATION ACTS

Heard at Glasgow

On 31 October 2019

**Decision & Reasons
Promulgated
On 5 November 2019**

Before

Upper Tribunal Judge Macleman

Between

HAMMAD HASSAN

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms S McKeeve, of McGlashan MacKay, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan. He gives his date of birth as 1 January 1988. He came to the UK in 2011 as a student, and remained after his visa expired in October 2013. He began a relationship with Yun Hu, a Chinese citizen, in January 2015. She was in the UK as a student. They married in September 2018. (She remains here; I was told that she recently obtained an extension of her visa for business purposes.)
2. The appellant sought asylum based on risk of forced marriage to a cousin in Pakistan; of "honour killing" if he resisted; and of persecution by his family and the authorities for a non-recognised marriage to a non-religious Chinese citizen.

3. The respondent refused the claim by a letter dated 3 January 2019, the salient points being:
 - [43] accepted “risk of being harshly treated on return to Pakistan with your wife, due to Pakistan laws and general perception of inter-faith marriages in Pakistan”;
 - [44 - 55] risk through arranged marriage not accepted; and
 - [56-68] relocation to China available.
4. FtT Judge Debra H Clapham dismissed the appellant’s appeal by a decision promulgated on 3 July 2019.
5. The appellant sought permission to appeal to the UT on grounds set out in his application dated 17 July 2019. The FtT granted permission on 22 August 2019.
6. The grounds of appeal to the UT aver error “because:
 - (i) the respondent had conceded that if he returned to Pakistan, the appellant would be at risk;
 - (ii) the appellant had no notice that internal relocation would be raised;
 - (iii) the evidence of the expert about relocation to China is ignored;
 - (iv) the decision about article 8 takes no account of proportionality; and in any event
 - (v) no findings / proper findings on credibility are made”.
7. The grounds go on to amplify those issues, and the submissions of Ms McKeeve were along similar lines.
8. Grounds (i) and (ii) overlap.
9. (The contention that to obtain a visa the appellant would have to return to Pakistan was supported by evidence and was accepted by the FtT at [41]. A visa application would not succeed if made to the Chinese authorities from a country where the appellant is not residing lawfully, and there is no apparent alternative to Pakistan.)
10. The contention that the appellant cannot go to Pakistan, even on his own, due to a risk of persecution which was conceded by the respondent, is not supported by the refusal letter. The limits of the concession are clear. There is nothing in the letter by which the appellant, on his own, might be at risk of persecution in Pakistan.
11. The appellant would not have to go to his family home unless he chose. There was nothing to suggest that there might be difficulty in going anywhere else while he obtained a visa. Ground (ii) is theoretical at best.

12. On ground (iii), it was contended that the FtT should have held that there would be a risk of persecution in China, due to the marriage, and a risk of the appellant's refolement to Pakistan.
13. The alleged risk of refolement was based on evidence of religious persecution in certain areas, and of some Muslim husbands of Chinese citizens being refused extensions of their visas. However, it was mere conjecture that if the appellant were once to be granted lawful entry, there might be a later change of heart.
14. In the (highly) unlikely event of the appellant lawfully entering China and later being forced to return to Pakistan, that would not be refolement of a refugee. Ms McKeeve recognised that, but said the principle applied by analogy.
15. The line of argument is ingenious, but far-fetched both on the facts and on the law.
16. The FtT noted that there is a degree of religious freedom in most of China. The appellant is not a practising Muslim. The conclusion that he would not be likely to be exposed to any ill-treatment on religious grounds did not ignore the evidence of the expert.
17. Ms McKeeve submitted that the FtT should have found that the appellant could not obtain a visa for China, based on the expert's statement that he would have to submit a marriage certificate with a photocopy stamped by the Pakistan Ministry of Foreign Affairs, and that as the marriage would not be regarded as valid in the law of Pakistan, a stamped copy could not be obtained.
18. That line is poorly supported by evidence and expert opinion and involves a further chain of conjecture. Professor Bluth merely footnotes a Chinese Embassy internet link. Is the Chinese Embassy likely to ask for an original UK marriage certificate (not a Pakistani certificate) to be authenticated by the authorities of Pakistan? Even if so, does Pakistani law decline to recognise marriages lawfully contracted in the UK? Those are questions for experts in the immigration and private international law of China, and in the private international law of Pakistan.
19. Fundamentally, as the FtT observed, the onus was on the appellant. The point was capable of being tested in practice, not only in theory; and the appellant had not tested the possibility of obtaining a visa.
20. The FtT gave sensible reasons at [41-42] for finding that the report did not make out the appellant's case. The author was not an expert in Chinese immigration law (or in private international law) and his observations about religious persecution did not bear on the facts of the case. Nothing in the report or in the evidence shows error in resolving these issues.

21. On ground (iv), it was said that “significant obstacles to relocation to China” was not the test, or not the only test, for article 8, and that the FtT should have made an overall proportionality assessment.
22. The appellant did not qualify to have his case considered directly in terms of section EX of appendix FM for several reasons, including his lack of status in the UK, and the status of his wife, who is not “a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection”. Nevertheless, section EX is a correct starting point.
23. There was nothing which might realistically have been held to amount to “insurmountable obstacles” to family life between the appellant and his wife continuing outside the UK, applying the definition of “the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner”.
24. As Mr Govan pointed out, failure to qualify for consideration in terms of section EX does not lead to a more generous frame of reference.
25. It is readily understandable that the appellant and his wife, as a young couple of secular views, prefer to see their future in the UK. Their case has a sympathetic aspect. Nevertheless, as two foreign nationals, one with no status and one without settled status, a much stronger set of circumstances would have to exist to show a right to carry on their family life in the UK, other than through compliance with the immigration rules.
26. The decision at [43] may be compressed, but any more elaborate consideration of article 8 would be bound to lead to the same result. Ground (iv) is no more than formalistic.
27. Ground (v) is both inaccurate and beside the point. The FtT did give reasons for doubting credibility, at [36], in which no error has been suggested; and at [37] found that the case failed even if taken “at the highest”, on internal relocation.
28. Ms McKeeve has pressed all the grounds as far as they could go, but separately and together they do not disclose that the decision of the FtT should be set aside for having involved the making of any error on a point of law. That decision shall stand.
29. No anonymity direction has been requested or made.



1 November 2019

UT Judge Macleman