



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

Appeal Number: HU/11451/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 4 October 2020**

**Decision & Reasons Promulgated
On 07 October 2020**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**AKMAL HASSAN RAJA
[NO ANONYMITY ORDER]**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant appeals with permission against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse him leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Pakistan.

Background

2. The appellant is 48 years old. He came to the United Kingdom in May 2004 when he was 32 years old, on a 6-month visit visa but failed to embark when it expired on 24 September 2004. He made an asylum application in 2005 which was unsuccessful: he was appeal rights exhausted on that appeal on 1 December 2005.

3. The appellant then made further submissions in June 2010 and a-r 2012, neither of which the respondent accepted as a paragraph 353 fresh claim. On 5 July 2012, the appellant applied for leave to remain outside the Rules, which was refused with no right of appeal. The appellant did not embark but remained unlawfully in the United Kingdom. He has not had valid leave since his visit visa expired in September 2004.
4. The claim the subject of the present appeal was made on 20 June 2018, initially with only an out of country right of appeal. On 21 June 2019, the respondent issued a refusal letter with an in-country right of appeal. This is the appeal against that decision.
5. The appellant's case, set out in his witness statement of 11 September 2019, is that his relationship with his wife in Pakistan has broken down and that he assumes, but cannot prove, that she has obtained a *khula*, a divorce based on his abandonment of her and his failure to send her any money in the 16 years he has now spent in the United Kingdom. The Secretary of State refused his application for leave to remain under the Rules because he is an overstayer and has never had leave to remain.
6. The appellant relies on his relationship with a partner in the United Kingdom; the respondent accepts that this newer relationship is genuine and subsisting. She is a divorcee, now 69 years old, who has a 92-year-old mother for whom she cooks every day. The appellant's partner has arthritis, multi nodular goitre and cataracts (although the latter have been successfully treated). The appellant accepts that the arthritis and goitre, which still require medical treatment, could be treated in Pakistan. However, he relies on his partner's close relationship with her mother: his partner is retired and spends most of each day with her mother in Leicester. The appellant's partner has a brother in Canada, who would be willing to have their mother join him, but the mother is unwilling to go to Canada.

First-tier Tribunal decision

7. The First-tier Tribunal found the judge's decision to be proportionate, having regard to the facts and matters set out above and to section 117B(4)(b) of the Nationality, Immigration and Asylum Act 2002 (as amended).
8. The appellant appealed to the Upper Tribunal, arguing that the First-tier Judge had applied in error an 'impossibility' test, failed to consider *Kugathas* dependency, and failed to explain his understanding of why socsvss support would be insufficient. The appellant considered that there were compassionate and/or compelling circumstances for which leave to remain should be granted.

Permission to appeal

9. Permission to appeal was granted on all grounds.

Rule 24 Reply

10. There was no Rule 24 reply on behalf of the respondent.

Further directions

11. On 6 July 2020, the Upper Tribunal sent out triage directions made by Upper Tribunal Judge Kopieczek in the light of the COVID-19 pandemic. The appellant was invited, if so advised, to submit further submissions on the error of law issue, with a right for the respondent to reply, if triage submissions were made, and a further right of reply for the appellant thereafter.
12. Both parties were directed to say whether they considered that a further hearing, oral or remote, was required. In default, the appeal would be considered on the papers and triage submissions, if any.

Submissions received

13. Neither party has responded to the triage directions and accordingly, I proceed on the basis that both are content for the question of a material error of law to be considered on the documents and submissions before the Tribunal.
14. That is the basis on which this appeal came before the Upper Tribunal.

Analysis

15. I am satisfied that it is appropriate to make a decision on whether the First-tier Tribunal decision contains a material error of law on the basis of the decision and documents in the file.
16. The First-tier Judge's approach to the facts of this appeal is not erroneous. Section 117B(1) requires the Tribunal to approach an Article 8 ECHR appeal on the basis that the maintenance of effective immigration controls is in the public interest. Section 117B(4)(b) requires the judge to give little weight to a private life, or a relationship formed with a qualifying partner, established when the person was in the United Kingdom unlawfully. That is the position here.
17. The appellant cannot bring himself within the Rules and little weight can be given to his relationship with his partner in the United Kingdom, to whom he is not married. I note that there is no reliable evidence that he is not still the spouse of his wife in Pakistan, albeit estranged. The appellant's partner has no children, and although he occasionally accompanies her to see her mother, there is no *Kugathas* dependency between this appellant and his partner's mother.

18. The First-tier Judge's decision that it is not disproportionate to refuse this appellant leave to remain on human rights grounds on the basis of the very limited case advanced on his behalf is unarguably correct. The grounds of appeal disclose no material error of law therein.

DECISION

19. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed [Judith AJC Gleeson](#)
Upper Tribunal Judge Gleeson

Date: 4 October 2020