



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

Appeal Number: HU/02258/2020

THE IMMIGRATION ACTS

**Heard at Field House (Remotely)
On: 24 May 2021**

**Decision & Reasons Promulgated
On 16 June 2021**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

UMAIR HUSSAIN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Malik, counsel instructed by Queen's Park Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Burnett, promulgated on 20 October 2020. Permission to appeal was granted by on First-tier Tribunal Judge Gumsley on 25 November 2020.

Anonymity

2. No direction has been made previously, and no request nor reason was given for directing anonymity now.

Background

3. The appellant entered the United Kingdom on 18 February 2011 with entry clearance as a Tier 4 migrant, valid until 30 April 2013. On 8 August 2018 he applied for leave to remain on human rights grounds on the basis of family life with a partner. That application was refused on 7 March 2019 with no in-country right of appeal. The appellant's judicial review challenge to that decision failed.
4. On 4 November 2019, the appellant made a further human rights claim based on his relationship with the same partner as before. The Secretary of State did not accept that the appellant was married to or had been living with his claimed partner and nor was it accepted that the relationship was genuine and subsisting. The respondent considered that the appellant did not meet any of the requirements of paragraph 276ADE(1) and nor were there any exceptional circumstances notwithstanding the appellant's claim that his partner was pregnant, his parents had disowned him and that he would have nowhere to go in Pakistan.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal which took place on 3 August 2020, the appellant and his partner attended in person and gave evidence. The Tribunal accepted that the relationship between the appellant and his partner was genuine and subsisting and that they had been living together in a relationship akin to marriage from August 2019. It was not argued before the judge that the appellant had a parental relationship with his partner's children and the judge did not accept that there was any risk or difficulty with the appellant's family in Pakistan. It was found that the appellant's partner could accompany him to Pakistan given that she no longer lived with her children from a previous relationship, who were being cared for by her ex-partner and an older daughter. It was concluded that there were no insurmountable obstacles to family life continuing in Pakistan, that it would not be disproportionate for the appellant to return to make an entry clearance application from Pakistan and that the public interest outweighed the appellant's interests.

The grounds of appeal

6. The grounds of appeal to the First-tier Tribunal were that the judge made perverse findings, failed to give reasons on material matters and failed to resolve conflicts on material matters. Those matters included that the appellant's partner had suffered a miscarriage, that it would be devastating for the partner's minor child if she relocated to Pakistan and that this child would be residing with the appellant and his mother.

7. Permission to appeal was granted on the basis sought, albeit there was some criticism of the “incomprehensible” grounds.
8. The respondent did not provide a Rule 24 response.

The hearing

9. At the outset, Ms Everett expressed her view that the First-tier Tribunal decision was not very comprehensive and that she could be persuaded that the judge erred but that those errors were not material.
10. Mr Malik argued that the First-tier Tribunal failed to adequately address all of the issues which were before it. Those unaddressed issues being whether there were insurmountable obstacles to family life taking place in Pakistan, whether there were very significant obstacles to the appellant’s re-integration in Pakistan and whether there were any exceptional circumstances, taking into account the best interests of the minor child of the appellant’s partner. I heard detailed submissions from Mr Malik which expanded on those themes, all of which I have taken into consideration.
11. In response, Ms Everett accepted that the judge had not dealt thoroughly with the issues raised today but that the judge was constrained by a lack of evidence as to the best interests of the children. While evidence of the sponsor’s pay was provided there was no argument that the financial requirements of the Rules were met. As the appellant had not demonstrated that the Rules were met it was open to him to return to Pakistan and make an application with the positive findings as to his relationship. There was no evidence before the judge as to the impact of the sponsor accompanying the appellant to Pakistan.

Decision on error of law

12. The judge accepted that the appellant and his partner (who is divorced and of Filipino origin) were in a genuine and subsisting relationship and that they had been living together in a relationship akin to marriage since August 2019 [39]. The appellant’s partner has four British children, the youngest aged 15 at the time of the hearing. That minor child was living with his older siblings at the time of the hearing because the sponsor was living with the appellant in Manchester and worked in a senior care role.
13. The evidence before the judge was that the appellant and sponsor visited the children weekly apart from when unable to do so owing to lockdowns emanating from Coronavirus regulations. The sponsor continues to provide for her children’s financial and emotional needs. The plan, referred to in the various witness statements, was for the minor child to live with the appellant and his partner once a new school had been arranged for him, but the various lockdowns had affected those plans.
14. There is little reference to the aforementioned evidence in the decision and reasons. Nor is there any reference to section 55 of the Borders,

Citizenship and Immigration Act 2009, the best interests of the minor child or of the considerations in section 117B(6).

15. In these circumstances, the judge's conclusions that there were no insurmountable obstacles to family life continuing in Pakistan and that the decision to refuse the appellant leave to remain on human rights grounds was proportionate, were materially flawed.
16. I considered whether to retain this appeal at the Upper Tribunal, albeit the parties were in agreement that it ought to be remitted. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his human rights appeal at the First-tier Tribunal which takes into consideration the best interests of his partner's minor child and it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Burnett.

No anonymity direction is made.

Signed:

Date 01 July 2021

Upper Tribunal Judge Kamara