



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/10843/2019

THE IMMIGRATION ACTS

Heard at : Field House
On : 23 November 2021

Decision & Reasons Promulgated
On: 29 November 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NAVEED BAIG

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan, born on 1 April 1984. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal.
2. The appellant entered the United Kingdom on 3 September 2007 with leave to enter as a student, valid until 31 October 2009. He was granted further periods of leave as a Tier 4 student until 15 July 2013. On 20 April 2011 he applied for an EEA residence card, but he withdrew his application on 12 September 2013. On 10 October 2013 he applied again for an EEA residence card. His application was refused on 1 April 2014. He subsequently

made five further applications for an EEA/ EEA (BIO) residence card between 7 October 2014 and 3 January 2018, all of which were refused, the last one being refused on 27 March 2018. It is apparent from the papers before me in the respondent's appeal bundle that at least one of those applications was made on the basis of his marriage, on 12 March 2013, to a Portuguese national, Tania Isabel Camacho Torres.

3. On 12 March 2019 the appellant applied for indefinite leave to remain outside the immigration rules. That application was made on the basis of his family and private life with his partner Hina Munir and their child Abdullah Baig. His application was refused by the respondent in a decision of 7 June 2019. The respondent considered that the appellant did not meet the eligibility requirements in Appendix FM as a partner because his partner was not British and was not settled in the UK. Likewise, he could not meet the requirements in Appendix FM of the immigration rules on the basis of being in a parental relationship with a child, because his son was not British and had not lived in the UK for at least seven years. It was considered that there were no insurmountable obstacles to family life continuing with his partner in Pakistan and that there were no very significant obstacles to integration in that country for the purposes of paragraph 276ADE(1)(vi). The respondent considered further that there were no exceptional circumstances justifying a grant of leave outside the immigration rules.

4. The appellant appealed against that decision on the grounds that the respondent had not fully considered his family and private life in the UK and the best interests of his child and that he had no family ties to Pakistan as his parents had died.

5. The appellant's appeal was heard on 19 April 2021 by First-tier Tribunal Judge Wylie. The appellant appeared in person without a representative and gave oral evidence before the judge. He told the judge that he had married an EEA citizen in 2013 and they had divorced in 2016. He then began a relationship with his current partner, a Pakistani national, in 2017, and they had a son born on 26 October 2017 and a daughter born on 15 July 2019. They all lived in his brother's home. The appellant said that his brother and his brother's three children were British, and his brother's wife had indefinite leave to remain in the UK. He said they were all very close. The appellant claimed to have no close family in Pakistan as his father had died when he was six or seven and his mother had died in 2014. He had last visited Pakistan 10 or 11 years ago and his children had never been there. He had no friends in Pakistan. He had worked in the UK when permitted to do so. His son had required surgery following his circumcision and continued to receive treatment. The appellant said that he himself suffered from chest pains and cholesterol. He believed that it would be very difficult to start life again in Pakistan.

6. The judge noted that the appellant had provided grounds of appeal and a skeleton argument for the appeal. She heard submissions from the presenting officer and, at the end of those submissions, the appellant asked if his brother could speak. The judge refused the request.

7. The judge dismissed the appellant's appeal in a decision promulgated on 23 April 2021. She rejected the appellant's claim that he was entitled to indefinite leave to remain on the basis of 10 years' continuous lawful residence in the UK as it was accepted that his lawful

leave ended in 2013. The judge did not accept a late assertion by the appellant that he and his wife would face difficulties in Pakistan from her family and found that the appellant had not given a credible account in that regard. She considered that the best interests of the children were to remain with their parents and that they could return to Pakistan as a family unit. She did not accept that the appellant would face very significant obstacles in Pakistan and concluded that the requirements of paragraph 276ADE(1) were not met. She found there to be no exceptional circumstances outweighing the public interest in immigration control and concluded that the respondent's decision was proportionate and did not breach Article 8.

8. The appellant sought permission to appeal that decision on the grounds that the First-tier Tribunal had not taken full account of Article 8. Permission was granted by First-tier Tribunal Judge Holmes on the grounds that the judge had arguably not provided an adequate reason for refusing to permit the appellant's brother to give evidence.

9. The matter then came before me. Ms Everett submitted that the judge was entitled to decline to hear from the appellant's brother and that there was no evidence to suggest that any material error of law arose from that.

10. The appellant made submissions in response, explaining that he had lived with his brother in the UK for 15 years and that his children had a strong relationship with his brother. He said that there was no point in him going back to start a new life in Pakistan as he had friends and family here. At the appellant's request, I permitted his brother to address the court and I asked him to explain what he would have told the First-tier Tribunal if he had been allowed to give evidence. He explained that the appellant had been in the UK for 15 to 16 years and that they were very close, he had no family in Pakistan and it would be very hard to start again there, that his quality of life was in the UK and that although he had no right to be in the UK, life was beyond the immigration rules.

Discussion and conclusions

11. As a preliminary matter, I have to say that I have some difficulty in understanding why permission was granted in the first place in this case. The grant of permission was on a different basis to the matters raised in the grounds, contrary to the guidance in AZ (error of law: jurisdiction; PTA practice) Iran [2018] UKUT 245. The handwritten grounds did not seek to identify any error in Judge Wylie's decision but were simply a very brief re-statement of the appellant's Article 8 claim.

12. In any event I consider there to be no merit in the challenge suggested by Judge Holmes. Judge Wylie made it clear at [5] of her decision that the appellant was asked at the beginning of the hearing if he wished to call any witnesses and he said that he did not. She was perfectly entitled, therefore, to decline to hear from the appellant's brother when a request was made after the presenting officer had made his submissions. I do not consider that there was any procedural unfairness in the judge's approach.

13. That is particularly so when there has been no evidence produced since the judge's decision to suggest that the appellant's brother had anything of merit to add to the

proceedings. Indeed, in order to ensure complete fairness, I permitted the appellant's brother to address this Tribunal and to explain what he would have said to Judge Wylie. What he said was merely a repetition of the request for the appellant to remain in the UK, given his lengthy residence here and his lack of ties to Pakistan. He accepted that the appellant had no right to be in the UK but said that life went beyond the immigration rules.

14. I have carefully considered Judge Wylie's decision and find nothing in it to suggest that she did anything other than give full and detailed consideration to the appellant's Article 8 claim. She directed herself appropriately and followed the proper approach when considering his claim within and outside the immigration rules. She gave careful consideration to the appellant's circumstances in the UK and Pakistan: she had regard to his family ties in the UK and his claim to lack such ties in Pakistan; she considered the length of time he had lived in the UK; she considered the medical issues raised both in relation to the appellant and to his child and noted the limited evidence produced in that regard; she considered the best interests of the appellant's children; and she considered the situation the family would face on return to Pakistan. The judge also considered the appellant's claim as to difficulties he and his wife would face from her family in Pakistan but gave clear and cogent reasons for rejecting that claim as lacking in credibility. She considered the ties between the appellant and his brother but noted the lack of evidence of anything over and above the usual relationships between adult siblings – indeed there was nothing in the appellant's brother's submission to me that suggested anything different.

15. The judge's conclusion, that there were no very significant obstacles to the appellant's integration in Pakistan and no exceptional or compelling circumstances justifying a grant of leave outside the rules on wider Article 8 grounds, was one which was fully and properly open to her on the evidence before her. The judge was fully entitled to reach the decision that she did and she made no errors of law.

DECISION

16. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed: *S Kebede*
Upper Tribunal Judge Kebede

Dated: 24 November 2021