



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17037/2019 (V)

THE IMMIGRATION ACTS

Heard remotely at Field House
On 11th December 2020

Decision & Reasons Promulgated
On 23rd February 2021

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

MUHAMMAD UMAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Popal, instructed by Khokhar Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

DECISION AND REASONS

1. The Appellant is a national of Pakistan born on 1 December 1983. He appeals against the decision of First-tier Tribunal Judge Dearden, promulgated on 15 January 2020, dismissing his appeal against the refusal of leave to remain on human rights grounds.
2. Permission to appeal was sought on three grounds:
 - (i) the judge disregarded the Article 8 rights of the Appellant;
 - (ii) the judge failed to properly consider that the failure to continue with IVF treatment would amount to an obstacle in the Appellant's family life pursuant to Article 8; and
 - (iii) the judge failed to consider the Sponsor's mental health issues.
3. Permission was granted by First-tier Tribunal Judge Keane for the reasons given in his decision of 29 July 2020. In summary, it was arguable the judge's finding, that there were no insurmountable obstacles to family life continuing outside the UK, was irrational and the judge failed to conduct a Razgar analysis outside the Immigration Rules.
4. The Appellant came to the UK as a student on 25 June 2010 and remained after his leave expired on 17 August 2011. In late 2013, he met his British partner, the Sponsor. They entered into a nikah ceremony on 5 January 2014. The Sponsor commenced formal divorce proceedings and received her decree absolute on 8 September 2014. The Appellant applied for leave to remain on 15 November 2016. This application was refused and certified as clearly unfounded on 7 March 2018. Judicial review proceedings were unsuccessful. On 15 June 2018, the Appellant submitted an application for leave to remain on private and family life grounds which was refused and is the subject of this appeal.

The judge's findings

5. The judge heard evidence from the Appellant and the Sponsor. He accepted they had resided together since the nikah ceremony in January 2014 and were truly committed to each other. They enjoyed family life together. The Sponsor was in regular employment in a position she had held for approximately two years. She had extended family in the United Kingdom including her parents and siblings. If the Sponsor went to Pakistan with the Appellant, she would have to terminate her employment and she would not see her extended family nearly as often. She had been to Pakistan three times on holiday.
6. The judge found that the Sponsor had undergone medical treatment for infertility and accepted that fertility treatment in Pakistan would be unaffordable. The judge concluded at [30(4)]:

“The Sponsor maintained that the current regime of treatment could not be interrupted, but I find from the documentation that there is no ongoing infertility treatment because there has been no activity in that regard since 31st July 2019.”

7. The judge found that the Sponsor was undergoing treatment for low mood, poor sleep, anxiety and depression and had been prescribed medication by her doctor. She was waiting for cognitive behaviour therapy and the Appellant’s immigration status was not helping her current condition.
8. The judge considered section 117B of the 2002 Act and concluded that little weight should be given to Appellant’s relationship with the Sponsor established when he was in the UK unlawfully. The Appellant had remained in the UK without leave for eight years and throughout the whole duration of his relationship. Further, little weight should be given to his private life established when his immigration status was precarious. The judge properly directed himself on the requirements of paragraphs EX.1, EX.2 and GEN 3.2 of the Immigration Rules.
9. At [30(6)], the judge found that an inferior quality of family life could be enjoyed if the Appellant returned to Pakistan and the Sponsor could continue to make regular journeys to Pakistan to be with her partner. The judge considered whether the Sponsor could go to Pakistan with the Appellant and concluded:

“She had been on three previous occasions on holiday and was familiar with the culture. She would have to terminate her employment but could gain employment in Pakistan even though she is female because she has experience of work in the United Kingdom. She would find it difficult leaving behind her parents and siblings especially because she is suffering from anxiety and depression. However, given her age she is capable of leading a fulfilling life without necessarily having regular face to face contact with her immediate family. It would of course be a wrench for the Sponsor to leave her family behind in the United Kingdom but none of these factors in my conclusion amount to anything which is insurmountable or would result in exceptional circumstances or unjustifiably harsh consequences. It may be very inconvenient for the Sponsor were the Appellant to return to Pakistan but that in itself is not enough. I do not conclude that the Appellant and Sponsor are currently undergoing treatment for infertility, but even if they were, with the prospects of success being indeterminate, to potentially deprive someone of their ability to give birth, in my conclusion, is insufficient to put the United Kingdom in breach of its obligations under Article 8.”

10. At [30(7)], the judge found: “It is indicated that the Sponsor’s ex-husband’s family are from the same area as the Appellant in Rawalpindi. The Appellant expresses a view that if returned to Pakistan they would continue to harass her. Even if this were true the remedy is of course to move to a different area of the vast nation of Pakistan”.

11. At [31], the judge concluded: "I have weighed all the evidence together cumulatively and in the round. Whilst it would be inconvenient and a nuisance for the Appellant to be removed to Pakistan the difficulties which would follow do not in my conclusion come within GEN 3.2 and EX.1, especially when one bears in mind the requirements of section 117B of the 2002 Act. Whilst I accept that the Appellant and Sponsor have family life together when one considers the proportionality of the Entry Clearance Officer's decision, when balancing the desire of the Appellant to remain in the United Kingdom against the desire of the United Kingdom government to have an orderly system of immigration control in the economic wellbeing of the country, I conclude that the balance comes down in favour of the Secretary of State."

Appellant's submissions

12. In her skeleton argument dated 21 October 2020, Ms Popal submitted the Sponsor wished to rely on further hospital appointment letters which related to her ongoing fertility treatment. This evidence post-dated the hearing before the First-tier Tribunal. The letter was dated 8 June 2020 and this was the first opportunity the Appellant had to produce this evidence before the Tribunal. The evidence was important and went to a material finding made by the First-tier Tribunal. Ms Popal applied under Rule 15(2) to admit this evidence.
13. The following cases were referred to in the skeleton argument:
- (i) Agyarko [2015] EWCA Civ 440;
 - (ii) SS (Congo) [2015] EWCA Civ 387;
 - (iii) R (on the application of Agyarko and Ikuga) v Secretary of State for the Home Department [2017] UKSC 11;
 - (iv) Rhuppiah v Secretary of State for the Home Department [2016] EWCA Civ 803;
 - (ii) Akinyemi v Secretary of State for the Home Department [2017] EWCA Civ 236;
 - (iii) MM and Others v Secretary of State for the Home Department [2017] UKSC 10;
 - (iv) Razgar v Secretary of State for the Home Department [2004] UKHL 27
 - (v) Hesham Ali (Iraq) v Secretary of State for the Home Department [2016] UKSC 60;
 - (vi) Beoku-Betts [2008] UKHL 39.
14. It was submitted the judge should have conducted a balancing exercise giving proper weight to the relevant factors: Agyarko and SS (Congo). It was submitted there would be very significant difficulties to family life continuing in Pakistan because the Sponsor would lose her job, her home and contact with her family. This would be especially difficult given her depression and anxiety. Both these points were accepted by the judge.

15. Further, the Sponsor is at risk of harassment and potential honour based violence at the hands of her father-in-law who still resides in Pakistan, in the same area as the Appellant's family: CPIN February 2020 at 1.2.1, 2.4.24, 6.3.1 and 6.5.7. Honour based violence at the hands of in-laws is common in Pakistan. Despite, the evidence in the witness statements of the Appellant and Sponsor (at [13] and [23]) the judge made only brief findings and concluded the risk could be alleviated by simply relocating elsewhere in Pakistan.
16. It was submitted the judge failed to carry out any consideration of the likely situation faced by the Appellant and the Sponsor if required to relocate to Pakistan. They would have no jobs or a home and limited means. In those circumstances, they would turn to family for accommodation until such a time as they were able to live independently. Based on the analysis provided by the judge, the Appellant and Sponsor could not rely on the generosity of family due to the risk from her former in-laws. The judge failed to consider this factor and the Sponsor's vulnerabilities as a former victim of domestic abuse at the hands of her ex-husband. An abuse survivor with prevalent mental health difficulties would face greater difficulties if required to leave her home, her family, her friends, her job and move to a country to which she has no ties, except for heritage, and which she has only visited on three occasions. The Sponsor would face questions within the community in Pakistan as to her divorce and would find it difficult to reintegrate as a divorced woman who has remarried.
17. In addition, the Sponsor would be unable to complete the cycle of NHS IVF treatment, to which she is entitled in the UK, if her husband was in Pakistan. Both parties needed to be present and fully engaged in the process. The Sponsor was currently undergoing more tests before the cycle could begin again. Emotionally, psychologically and physically it was important for her to have the support and participation of the Appellant in the ongoing process to ensure the best chance of success. If the Appellant returned to Pakistan to seek entry clearance the Appellant and Sponsor would face the stress and emotional impact of being separated at a time when they are trying for a baby with the help of IVF and further delay in conception would follow. The Appellant and Sponsor could not afford fertility treatment in Pakistan.
18. The judge accepted the Sponsor had undergone fertility treatment but rejected her claim to be on a waiting list on the basis the Appellant had not had any further appointments since 31 July 2019. It was submitted this finding was irrational. It was common knowledge that waiting times in the NHS were extensive. It was not extraordinary that the Sponsor had not had an appointment in five months. The judge gave no reasons for rejecting the Sponsor's account that she was on a waiting list. The Respondent was not represented at the hearing and there was no cross-examination. It was never put to the Sponsor that she was lying or mistaken in fact. The further evidence demonstrated the Appellant had an appointment with a consultant gynaecologist on 8 June 2020. It was not simply a question of the Sponsor wanting to give birth in the UK. The judge accepted that fertility treatment would be

completely unaffordable to the Appellant and Sponsor in Pakistan. They would be deprived of ever having a family.

19. It was submitted that even if there were no insurmountable obstacles, the factors advanced were relevant to the assessment of Article 8: Agyarko at [28] to [30] and EB (Kosovo) [2008] UKHL 41. It will rarely be proportionate to uphold an order for removal of a spouse if there is a close and genuine bond with the other spouse and that spouse cannot reasonably be expected to follow the removed spouse to the country of removal. The judge failed to carry out a meaningful balancing exercise as outlined by the grant of permission by Judge Keane.
20. It was submitted that, on the totality of the evidence and in light of the Sponsor's mental health, the removal of the Appellant or requiring the Appellant and Sponsor to relocate to Pakistan would have consequences of such gravity so as to engage the operation of Article 8. The level of interference required is not especially high: AG (Eritrea) v Secretary of State for the Home Department [2007] EWCA Civ 801. The Appellant's removal would result in a further deterioration of the Sponsor's health and an increased risk of jeopardising her physical and moral integrity.
21. In oral submissions, Ms Popal referred to Agyarko at [51] and submitted Chikwamba was still good law. The Sponsor was working and could meet the financial requirements of the Immigration Rules. If an application for entry clearance was made it would succeed. Ms Popal was not sure whether this point was raised before the First-tier Tribunal but submitted that the judge failed to consider it and ought to have done so. She submitted there were several problems with the decision. The judge had referred to the Respondent as the Entry Clearance Officer which was totally irrelevant. It was clear from Agyarko that a balancing exercise had to be conducted and the judge had to look at all the information in the round. The judge had made factual findings which were not open to him and he failed to take into account material facts. Had the judge done so, a different balance could have been struck.
22. Ms Popal submitted it was not open to the judge to find that there was no ongoing fertility treatment. The Appellant was still receiving treatment and she was due to have an operation in January. The Respondent was not represented at the hearing before the First-tier Tribunal and the Sponsor's evidence was not challenged. If the judge had doubts about that evidence, he should have put those doubts and matters to the Sponsor before making any negative credibility findings. The judge never put these matters to the Sponsor. If he had accepted there was ongoing treatment this factor in addition to the other factors would have shifted the balance in favour of the Appellant.
23. Ms Popal submitted the case of Agyarko was different on its facts. The Sponsor was entitled to access IVF treatment and she was a British citizen. The judge had side-stepped the sensitive factual matrix in this case, fleetingly referring to harassment from relatives at [30(7)]. The judge had failed to consider material facts. It was not

appropriate for the Appellant and Sponsor to relocate because they had limited finances and would have no jobs in Pakistan. The best way to find a job would be to stay with family members. The judge's findings were inconsistent.

24. Ms Popal quoted from the CPIN and submitted that the judge had failed to look at the Sponsor's vulnerability. There was no consideration of the fact that the Sponsor was a former victim of domestic violence. The judge had not conducted a balancing exercise in accordance with Agyarko. The Sponsor would have great difficulty in moving to a country where she has no ties. The Sponsor is a British citizen and the language barrier would affect her ability to get a job. The fact that she was a former divorced woman would also lead to difficulties.
25. The Sponsor was entitled to IVF treatment in the UK. It was not a question of where she gave birth, it was about not being able to have a family. The decision to remove the Appellant would have lifechanging consequences which the judge had failed to consider. The judge failed to refer to Razgar at [29]. He did not deal with the inability to have a child and dealt inadequately with the Sponsor's mental health.
26. Ms Popal relied on the grant of permission and submitted the judge's findings were irrational and on the particular facts of this case the refusal of leave to remain was disproportionate. The judge failed to consider what had led to the Sponsor's depression and anxiety. There was no reference to her being a survivor of domestic violence. She was young and vulnerable and it was disproportionate to require her to go back to the area where her former in-laws lived.

Respondent's submissions

27. Mr Jarvis submitted that the Appellant's submissions were far-reaching and Ms Popal was seeking to re-argue her case. She had relied on several new points which were not in the grounds of appeal and permission had not been granted on those points. The Appellant's repeated criticisms were unfair. The arguments put forward by Ms Popal had not been made before the First-tier Tribunal. The Appellant was represented and the judge did not err in law in failing to consider an argument which had not been made. The grounds of permission to appeal did not rely on a failure to consider Razgar. Ms Popal had over-extended the challenge argued orally which was not made in the grounds of application.
28. In any event, the judge dealt with Razgar in substance and carried out a lawful proportionality assessment. He considered paragraphs EX.1, EX.2 and GEN 3.2. The first four questions of Razgar were clear from the facts and were not in dispute. The issue was whether the Appellant had established his case. The judge's findings were not contradictory and there was no adverse credibility finding. On the facts, the test of insurmountable obstacles was not met. The evidence before the judge did not establish the assertion made. The absence of a presenting officer was irrelevant and it was not appropriate for the judge to enter the arena. The judge did not accept that

the evidence presented met the threshold. The Appellant's point in relation to failing to put matters to the Sponsor was misconceived.

29. Mr Jarvis submitted the new evidence in respect of ongoing IVF treatment did not alter the situation because the judge found, in the alternative, that the inability to access IVF was not sufficient to meet the threshold. The Supreme Court in Agyarko and Ikuga at [43] was satisfied that this did not amount to insurmountable obstacles which was a particularly demanding threshold. Further, a British citizen relying on interruption of employment and fertility treatment did not meet the exceptional circumstances test: Agyarko EWCA at [40], [45] and [50] and UKSC at [73]. There was no ambiguity. The new point raised by Ms Popal, that the Sponsor was a British female who would be prevented from having a child, was not sufficient to distinguish this case from Agyarko and Ikuga. The distinction was artificial and the Supreme Court rejected the argument relied on by the Appellant in this case.
30. In addressing Ms Popal's submission that the judge failed to consider the Sponsor was a survivor of domestic violence, Mr Jarvis submitted it was not clear that this was the basis upon which the case was put before the First-tier Tribunal. The burden was on the Appellant to show that this point was made and ignored. Ms Popal was making a new case in her argument today upon which permission had not been granted. The judge did what he could with information before him and the way the case was put.
31. Mr Jarvis relied on his Rule 24 response dated 13 October 2020 and the case of R (Kaur) v SSHD [2018] EWCA Civ 1423. He submitted Chikwamba could only be successfully applied in extreme cases, i.e. an applicant was certain to be granted leave to enter, if an application was made from outside the UK, to show that there was no public interest in removal. The Chikwamba principle required a fact-specific assessment in each case and only applied in a very clear case which would not necessarily result in a grant of leave to remain. Even if Chikwamba applied in this case, it may only lead to a disproportionate conclusion. The understanding of this decision had changed and it rarely had an impact. It was not an obvious point and, if it had been argued, there was no chance of success. Since 2008 there had been a major revolution in the Secretary of State's policy. There was now a test under the Immigration Rules of insurmountable obstacles. Chikwamba could not have made a material difference. In this case the parties simply had to apply in the queue with everyone else. This had to be weighed against the long period of unlawful residence.
32. Mr Jarvis submitted there was clear authority that IVF treatment was insufficient to meet the threshold of insurmountable obstacles and the Upper Tribunal was not able to conclude otherwise. The irrationality point could not succeed following the Supreme Court's conclusions in Agyarko and Ikuga. There had to be other circumstances other than employment and infertility. The only other element was the question of vulnerability which was not raised before the First-tier Tribunal or in the grounds of appeal.

33. Mr Jarvis submitted that exceptional circumstances were put into the Immigration Rules in 2017. Agyarko did not assist the Appellant. If the Appellant could not succeed under paragraph GEN 3.2 he had nowhere else to go. If there were insurmountable obstacles then the refusal of leave may be disproportionate. The Appellant had to show that the other factors were exceptional and he had not done so in this case.

Appellant's response

34. Ms Popal submitted that the Sponsor's vulnerability was mentioned in evidence and was not recorded in the decision. Ms Popal's instructions were that the Sponsor had reiterated her vulnerability in examination-in-chief. In any event, vulnerability was apparent on the evidence before the judge. It was illogical that it must be expressly put. It was obvious that an 18 year old who had stayed with a violent man for several years would be vulnerable and it was harsh for the judge not to consider it. This was a consideration which should have been taken into account in the balancing exercise. This case was not bound to fail. There were facts which were not considered and factual findings which were not open to the judge. It was not open to the judge to conclude that there was no ongoing infertility treatment.
35. Ms Popal submitted it was apparent from the case of Kaur that the issue was fact sensitive. Even if Chikwamba was not argued, the judge should have considered it. The Immigration Rules were not a complete code and the judge had not considered Razgar expressly or implicitly. The decision was poor and there was no anxious scrutiny which was demonstrated by the judge's reference to the Entry Clearance Officer. The legal application of the test of insurmountable obstacles to the factual matrix showed that there were holes in the decision at every stage. It was unfair for a decision of this quality to stand. The judge failed to take into account relevant evidence given in examination-in-chief and there was a clear absence of the test in Razgar. The errors of law were material.

Conclusions and reasons

36. Permission to appeal was granted on the basis that it was arguable the judge had made irrational findings and he failed to conduct a "Razgar" analysis. The grounds submit that the inability to access IVF treatment and the Sponsor's mental health issues demonstrated there were insurmountable obstacles to family life continuing outside the UK and/or exceptional circumstances sufficient to outweigh the public interest. Many of the points raised by Ms Popal were not relied on in the grounds of appeal and were not the subject of the grant of permission. I agree with Mr Jarvis that Ms Popal was seeking to re-argue the appeal by relying on points which were not raised before the First-tier Tribunal. In addressing the submissions upon which permission to appeal was granted I have considered the further arguments advanced before me. My reasons for rejecting the Appellant's arguments are set out below.

Irrationality

37. The judge found (at [30(4)]) that there was no ongoing infertility treatment because there had been “no activity in that regard since the 31 July 2019.” The Sponsor was of the view that she was on a waiting list, but there was no documentary evidence to show that was the case or to show that she had a further appointment. It is not appropriate to rely on evidence which post-dated the decision to argue that the judge’s conclusion was irrational. The judge’s finding that there was no ongoing infertility treatment was one which was open to him on the evidence before him. The Appellant was represented at the hearing and there was no obligation on the judge to put matters to the witness.
38. In any event, this finding was not material to the decision to dismiss the Appellant’s appeal. The judge considered the case in the alternative, stating that even if the Appellant and Sponsor were currently undergoing treatment for infertility, this was not sufficient to put the United Kingdom in breach of its obligations under Article 8. This finding was consistent with the Supreme Court decision of Agyarko and Ikuga. I am not persuaded that the decision can be distinguished on its facts as submitted by Ms Popal. The fact that the Sponsor was a British citizen was not a decisive factor.
39. In Agyarko and Ikuga, the Supreme Court held at [73]:
- “In relation to this matter, this court has no basis for interfering with the decision of the specialist judge of the Upper Tribunal, affirmed by the Court of Appeal. So far as the application under the Rules was concerned, the judge correctly identified that Ms Ikuga would have to satisfy the “insurmountable obstacles” test in paragraph EX.1(b), and explained convincingly why she could not do so on the basis of the information which she had placed before the Secretary of State: see the summary of his reasoning at para 32 above, and the summary of the material which Page 28 Ms Ikuga had provided, at paras 26-28 and 30 above. Nothing in the discussion of that test in this judgment places in question his conclusion, with which the Court of Appeal agreed, that the test could not possibly be met on the basis put forward on Ms Ikuga’s behalf: in summary, that her partner was in full-time employment in the UK, and she was undergoing fertility treatment. So far as leave to remain was sought outside the Rules, there is similarly nothing in this judgment which undermines his conclusion, with which the Court of Appeal agreed, that Ms Ikuga had not put forward anything which might constitute “exceptional circumstances” as defined in the Instructions, that is to say, unjustifiably harsh consequences for the individual such that the refusal of the application would not be proportionate.”
40. It is apparent from the decision that the judge took into account the Sponsor’s anxiety and depression. Ms Popal submitted the judge failed to consider the Sponsor’s vulnerability, as a victim of domestic violence, on relocating to Pakistan

and to consider what had led to the Sponsor's anxiety and depression. The Sponsor referred to domestic abuse in her previous marriage in her witness statement, but it does not appear that this was relied on in submissions.

41. The GP letter of 30 May 2019, referred to by the judge at [30(4)], stated that the Sponsor had a difficult time in her first marriage due to domestic violence. It confirmed the Sponsor was taking medication and stated that her mental health was affected by the Appellant's immigration status. The judge's failure to refer to the Sponsor's vulnerability as a former victim of domestic abuse was not material to his finding that there were no insurmountable obstacles or exceptional circumstances. The Sponsor would continue to have the support of the Appellant in Pakistan. The judge considered the medical evidence and it was not argued that the Sponsor would be unable to access treatment for low mood, poor sleep, anxiety and depression in Pakistan.
42. The grounds do not challenge the judge's finding at [30(7)] that the Sponsor could avoid harassment from her ex-husband's family by moving to different area in Pakistan. I am not persuaded by Ms Popal's submission that there were insurmountable obstacles to family life continuing in Pakistan because the Appellant would not be able to return to his home area and the couple would not be able to relocate given their lack of finances and lack of family support outside Rawalpindi. The Appellant gave evidence that he was employed in Pakistan prior to coming to the UK and the judge was entitled to conclude that the Appellant could gain employment on return. The inability to live with relatives in Pakistan was insufficient to meet the insurmountable obstacles test.
43. I am satisfied the judge took into account the Sponsor's previous marriage and divorce, and the potential harassment should she return to the Appellant's home area in Rawalpindi. The judge considered the lack of fertility treatment and the effect on the Sponsor's mental health should she return to Pakistan with the Appellant. There was insufficient evidence before the judge to show that the Appellant would not have access to treatment for her anxiety and depression.
44. I find that the judge took into account all relevant circumstances and his findings were consistent. He properly directed himself in law and his conclusion that there were no insurmountable obstacles to family life continuing outside the UK was open to him on the evidence before him. The judge gave adequate reasons for coming to that conclusion at [30(6)].

Razgar

45. At the hearing before the First-tier Tribunal, the Appellant's representative accepted the Appellant could not succeed under the Immigration Rules because he was an overstayer (see [29]). The judge was invited to deal with the appeal under Article 8 and in particular to examine EX.1 and GEN 3.2. The judge did so. The case was not put on the basis that if the Appellant made an application for entry clearance it

would succeed. The point was not obvious and the judge did not err in law in failing to consider an argument which was not advanced by the Appellant's representative.

46. In any event, the weight to be attached to the public interest was significant given the Appellant has remained in the UK unlawfully for eight years and, during that time, has established a relationship with the Sponsor. There was no challenge, in the grounds of appeal, to the judge's finding at [30(6)(1)] that the Appellant could return to Pakistan whilst the Sponsor remained in the UK. The evidence before the judge was insufficient to establish unjustifiably harsh consequences if the Appellant returned to Pakistan to obtain entry clearance. The delay or inability to obtain fertility treatment was not sufficient: Agyarko and Ikuga.
47. The failure to refer to Razgar was not material. It was apparent from the decision that the judge had answered the first four questions in the affirmative. The only remaining issue was proportionality which the judge considered at [31]. The judge weighed all the evidence and concluded the balance came down in favour of the Respondent. On the facts, there were no exceptional circumstances and the judge had struck a fair balance. Reference to the Entry Clearance Officer was not material and did not indicate a lack of anxious scrutiny. The judge's finding that the refusal of leave to remain was proportionate was open to him on the evidence before him and he gave adequate reasons for coming to that conclusion.
48. I find that there was no error of law in the decision dated 15 January 2020 and I dismiss the Appellant's appeal.

Notice of decision

Appeal dismissed

No anonymity direction is made.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 5 February 2021

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

J Frances

Signed
Upper Tribunal Judge Frances

Date: 5 February 2021

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email