



IAC-PE-SW-V1

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

Appeal Number: IA/03846/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22<sup>nd</sup> October 2014**

**Decision & Reasons Promulgated  
On 14<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**SYED MOHAMMAD HUSSAIN SHAH  
(NO ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr Harding - Counsel

For the Respondent: Mr Melvin - Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Syed Mohammad Hussain Shah, a citizen of Pakistan born 16<sup>th</sup> March 1978. He appeals against the decision of the Respondent made on 23<sup>rd</sup> December 2013 to refuse leave to remain in the United Kingdom on human rights grounds.

2. The Appellant appealed against that decision and his appeal was allowed by First-tier Tribunal Judge Doyle and the reasons for that decision set out in a written decision issued on 9<sup>th</sup> June 2014. The Secretary of State sought permission to appeal against the decision of Judge Doyle and on 20<sup>th</sup> August 2014, having heard submissions, I found that there was a material error of law in the decision of the First-tier Tribunal and I set that decision aside with no preserved findings of fact.
3. I now proceed to re-make the decision.
4. The facts of this case can be summarised as follows. The Appellant arrived in the UK on 1<sup>st</sup> January 1999 and claimed asylum. This application was refused in January 2000 and the Appellant became appeal rights exhausted on 16<sup>th</sup> October 2000. The Appellant submitted an application for leave to remain under Article 8. He was granted permission to marry and given discretionary leave to remain which was valid until 6<sup>th</sup> October 2011. He underwent an Islamic marriage with Ms Arshad in August 2005 and the marriage was dissolved on 19<sup>th</sup> April 2011. Ms Arshad has two children from a previous marriage born in 1991 and 1998. The Appellant's family disapproved of his marriage to Ms Arshad and refused to accept her as a member of the family. This led to their divorce and to the current situation where they see each other but maintain separate homes. The Appellant has been step-father to the Appellant's children and says that his 15 year old step-son is dependent upon him. The Appellant did indeed claim at the previous hearing that he should be viewed as the parent of that child but Judge Doyle rejected the submission that the Appellant is the 15 year old's "parent" in terms of the Immigration Rules and this submission was not renewed before me.
5. Statements from the Appellant and from Ms Arshad were provided.
6. The Appellant states the following. He relates his immigration history as set out above. He was encountered by Immigration Officers and detained for around eleven days prior to being released on 25<sup>th</sup> September 2006. He then married Ms Arshad. He was granted discretionary leave to remain in the UK valid for three years. This was on the basis of his relationship with Ms Arshad and her children. As his asylum claim was still outstanding he sought to submit further representations and attended the Further Submissions Unit on 11<sup>th</sup> October 2013 but was refused leave on 23<sup>rd</sup> December. His permission to work was revoked and he has been unable to work. He has been doing jobs for friends, decorating and gardening etc. to get some money.
7. With regard to his relationship with Ms Arshad they met around March 1999. The marriage was not welcomed by their families. She was divorced which was very much frowned upon. His family refused to accept her. Her family were also strict and as she had been previously married and divorced she chose not to tell her family about their relationship. The disapproval of his family placed a great amount of stress on them. This led to their divorce in 2011. Despite the marriage breaking down they continued their relationship in hiding from his parents. They had no option but to do this because his extended family had made threats towards him, Ms Arshad and her children as they deemed their relationship to have brought

shame on the family. They decided it would be better to live in separate accommodation. He has family in the UK although his parents lived in Pakistan and the UK family would have told them about him. Ms Arshad's children have not had a father in their lives for a long time. He was there as a role model and a father figure for them. They spend considerable time as a family undertaking activities, going on city breaks, day trips, shopping, to the cinema and socialising. He treats her children as if they were his own. Ms Arshad works nightshifts and has done for about thirteen years. He stays the night at her house looking after them whilst she is at work. They continue as a family unit. He has returned to Pakistan twice, in March 2009 and December 2010 when his parents died. He has close friends in the UK who he has now known for fifteen years. He has spent a lot of time at the Mosque assisting in general duties and has done charity work. He does not want to return to Pakistan. He would struggle to find employment there and has no further education or qualifications. He has integrated into UK society. He believes that his case has not been properly considered under the Legacy Programme and he has been the victim of delays at the hands of UK Border Agency and of inadequate and inconsistent treatment. This delay has led him to build many friendships in the UK. These friends along with his family members have supported him and assisted him in his times of need. He has recently been separated from his family in Pakistan, has lost contact with them and feels very lonely. He is well-known in the local community with strong societal connections in the UK.

8. In her statement Ms Arshad states the following. She left Pakistan in 1992 and has lived in the UK for 22 years. She has two sons. She works as an aircraft groomer at Heathrow Airport and has been there for thirteen years. She describes how she met the Appellant, how they married and had to divorce due to external pressures from his family. They had married without the consent of their families which had caused many arguments. She wants things to improve so that they can be together again but there continue to be family disagreements and much disapproval which caused them to decide to live apart. She and the Appellant remain in contact and continue to see each other on a daily basis. He has greatly assisted her during the marriage and after it. She describes him as a kind, generous, hardworking, trustworthy person who is always willing to help people less fortunate than he is. He has been like a father to her children. He has given her much assistance as a single mother and without him it would have been very difficult for her to survive. It would be impossible for her and her sons to return to Pakistan and resume family life there with the Appellant.
9. I heard oral evidence from the Appellant who adopted his statement. In cross-examination Mr Melvin asked him how long he and Ms Arshad had lived apart and he responded that they had never lived apart. They had always been together. He left her due to family pressure. He had to say he was leaving her because of family pressure but he did not leave her. He does not receive correspondence at Ms Arshad's house and does not pay council tax there. He has a separate address. I asked him from what family members the pressure was coming and he said it was his family in Pakistan and acquaintances here. When I asked him to be more specific he said it was his brother. There was considerable questioning at this point from Mr Melvin about the Appellant's fears of harm. He said that his family threatened to tell

Ms Arshad's family that they were married and because she was married before this is not acceptable. He would like to marry again but they are still waiting for the pressure to be reduced. It was put to him that he was being very vague about where the pressure was coming from and he responded that people threaten that they will tell Ms Arshad's family. When asked for specification he said that by "people" he meant many acquaintances. He did not want to reveal their names. He was adamant that what he was saying was true and that the problems were genuine, this in the face of a suggestion from Mr Melvin that he was simply making it up in an effort to circumvent the Immigration Rules. Mr Melvin then asked him if what he was saying was that he is living a secret life with Ms Arshad. He responded that that is so. He said no-one knows about it. He was then asked how it can be secret when according to his statement, he enjoys a full social and outdoor life with Ms Arshad's children. He responded that they live as a family. The secret is that they have told people that they are divorced and their internal relationship is unknown. I at that point asked him whether it is the case that he goes out and about with Ms Arshad and the children. He said he does but people understand that they are divorced. They are waiting for the right moment to get married. He was asked whether if he was required to leave the UK he would make an application to return as Ms Arshad's partner. He said that he did not understand that question and asked "why would I leave". He was asked what basis he thinks he has for remaining in the UK and said that he and Ms Arshad are living together and he has to marry her. Even when they got divorced the intention was that they would remarry. His wife's family consist of a brother and sister and they are in Pakistan.

10. In re-examination Mr Harding attempted to clarify some of the evidence that had been given in cross-examination. He asked the Appellant to give the names of the people who were pressurising him. The Appellant responded that it was people from Pakistan. Mr Harding pressed him on this point and eventually he said it was his brother and sister who threatened to go to Ms Arshad's house and tell her sister. He then said it was acquaintances and 'all the people around'. It was people they saw here. Mr Harding at this point put it to his client that he was not making any sense. The response was that in the past "they" have put a lot of pressure on him. I asked him if it was the case that Ms Arshad's brother and sister were unaware that she had divorced her previous husband. He seemed unable to answer that question saying that it was pressure from his family not hers. Mr Harding asked the Appellant to give examples of the sort of pressure to which they were subjected asking for example if it was abuse in the street, phone calls etc. The Appellant responded "yes - like that". He said that people would stop Ms Arshad in the street and insult her. Nothing like that had happened to him. He was asked if anyone in the UK had said anything rude to him because of the relationship and he said that no-one had. When Mr Harding asked him if it was only his brother in Pakistan who was putting pressure on them he responded that he does not speak to him now. They have no contact. When he used to speak to him his brother would ask why he married Ms Arshad and he would tell him that her children are his children. His brother and sister said he should leave her. He said he has now stopped contact - a

long time ago. He then said he has reduced the frequency of the contact and then that he last spoke to his brother last month.

11. In oral evidence Ms Arshad adopted her statement. She said she and the Appellant divorced because of family pressure. The pressure was not from her family because they did not know. It was the Appellant's brother. In their culture it is not possible to divorce and remarry. I put it to her that she had been divorced from her first husband and the Appellant's family probably knew that. She said they did but they had problems with her family. Her mother and family did not want her to get divorced from her first husband. She confirmed that she was the one who had initiated the divorce. She said that she has visited Pakistan a couple of times in the past. Her son is attending sixth form college and she is settled here.
12. In cross-examination she said that she was aware that the Appellant had no leave at the time she married him but he had an appeal on human rights grounds pending. She denied that she had married him to enhance his claim and said that if she had done that there is no reason why she would have got divorced. She was asked why it took six years for the pressure from the family to build up to the point where they had to get divorced and she said they were hoping it would calm down throughout this six year period. When I asked her who was exerting pressure she said it was the Appellant's family who were always asking them to separate and making threats. They would call him and do this two or three times a day or two or three times a week. Mr Melvin asked her why they are living in separate houses. She said they do not. They live together. The two addresses are only for people who disapprove. Mr Melvin asked her what would happen if they both lived openly in the same house as husband and wife and she said that would be a sin and they would have to face "all these hardships". It would be the Appellant's family who would cause trouble. They would tell her family. She last saw her family when her mother died and before that she would see them perhaps once a year. They were aware that she was a single mother. They would stop contact with her if they found out about the relationship with the Appellant. She said that family relationships are equally important to her as her relationship with the Appellant.
13. I asked her if it is the case that her first divorce did not destroy her relationship with her siblings. She said for a few years they did not speak to her. They found out because people here have contacts in Pakistan. Mr Melvin asked her if what she was saying was that she and the Appellant are living in secret and she said that is so. He asked her where they go when they go out as a family and she said they do not go out locally. They go further away. I suggested that the Appellant must be going in and out of her house all the time and she said that is true but she does not speak to the neighbours. I asked about friends and she said she has only one and she knows about it.
14. In his submissions Mr Melvin said that there is no real relationship. They are living in separate houses. He asked me not to accept the account given by the Appellant. There is no reason why the relationship should not be a normal one. There has been a deliberate attempt to shroud the relationship in Pakistani cultural mores that are

highly unlikely to apply to their circumstances. He reminded me that I have to take into account the Appellant's immigration history in terms of paragraph 117A and B of the 2002 Act. There is no reason why Ms Arshad cannot go to Pakistan to live with the Appellant.

15. In his submissions Mr Harding questioned why the couple would get divorced if Ms Arshad had married the Appellant to assist his immigration claim. He questioned whether there had been any dishonesty and submitted that the core of the account is true. They are partners. There are no grounds on which the Secretary of State can reasonably suggest that this is not a genuine relationship. He submitted that they would succeed under paragraph EX.1 of Appendix FM and that the appeal should be allowed on that basis.

### **Findings and Decision**

16. I have given very careful consideration to all the evidence put before me in this case.
17. I have grave concerns about the evidence that I heard from the Appellant. He was finding it very difficult to give a straight answer to a simple question. He was unable to give any details of the kind of pressure to which he and Ms Arshad had been submitted. He was not consistent as to where the pressure was coming from. He said he had ceased contact with his brother then said he spoke to him last month. The account that the Appellant gave in his statement about how he has integrated into society, the activities he engages in, the number of friends he has, the loyalty and support he has enjoyed from friends is inconsistent with his claim that no one knows that he and Ms Arshad are living together as they both claim, or with his claim that it is acquaintances in this country who are the root of his fear of family in Pakistan finding out about him and Ms Arshad. It is also inconsistent with the comment of Ms Arshad that she has only one friend who knows about the relationship but she does not speak to the neighbours and it is people in this country that she fears will tell her family in Pakistan that she and the Appellant are living together. It seems to me that they either go out as a family, mix with people and get involved in the community including the Mosque or they do not. The evidence looked at in the round does not support the contention of both the Appellant and Ms Arshad that they are living together in secrecy.
18. Further, they were both unable to give any credible, consistent or coherent account of the pressure they say they have been subjected to, despite the efforts of even Mr Harding to elicit this. There is no coherent or reasonable explanation for their claim not to be fully sharing one house as man and wife but to be maintaining two properties. The Appellant claims to sleep at Ms Arshad's house every night, to provide care for the children while she does a night shift and to have a full family and social life with her and her children. How could people not know they are living together? Mr Harding questioned why they would have divorced if, as was suggested by Mr Melvin, the marriage was undertaken solely to enable the Appellant to remain in the UK. The reason given for the divorce was outside pressure. I note that although the Appellant's parents were according to his statement opposed to the

marriage and exerting pressure on him it was not until many months after their deaths that the divorce happened. I note too that at the date of divorce the Appellant still had leave to remain in the UK. I find it odd that despite having divorced and despite claiming that the pressure is ongoing the Appellant said over and over again that they would be getting married again as soon as the pressure stopped and I think it is significant that Ms Arshad made no mention of this.

19. Having considered all the evidence I do not accept that Ms Arshad's family are unaware that she is divorced from her first husband or that she is living with the Appellant. I do not accept that the Appellant has lost touch with his brother or that the fact that his brother would have a problem with him marrying a divorced woman would lead to the current claimed situation. I find that the Appellant has not established that he and Ms Arshad are in a durable relationship. Their account is not only rife with inconsistencies but is utterly implausible. I do not accept that they are living together in a relationship akin to marriage. I find that the requirements of Appendix FM of the Immigration Rules are not met.
20. Mr Harding submitted that the Appellant meets the requirements of paragraph 276ADE(vi) of the Immigration Rules because he has no ties to Pakistan. At the time the decision was made by the Respondent this provision required an applicant to show 'that he or she has no ties, including social cultural or family' with the country to which he would have to go if required to leave the UK.
21. Paragraph 276ADE was amended with effect from 10<sup>th</sup> July 2014 and the amendment replaces the words in parenthesis in paragraph 18 above with,
 

'there would be very significant obstacles to the applicant's integration into'.
22. According to Statement of Changes HC532 this change came into effect on 28<sup>th</sup> July 2014 and applies to all applications to which paragraph 275ADE and Appendix FM apply and to any other ECHR Article 8 claims and which are decided on or after that date. The application in this case was decided on 23<sup>rd</sup> December 2013 so I assume that the original version of 276ADE applies. It does not in any event matter which version is applied because the Appellant does in my view, looking at all the circumstances, still have meaningful social, cultural and emotional ties to Pakistan. He still has family there as does Ms Arshad. He has been in the UK since 1999 but lived all his life before that in Pakistan. He has visited Pakistan since he came here and maintained ties with that country.
23. I turn now to consideration of the appeal under Article 8 ECHR.
24. In **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)** the Tribunal said,(
  - b) after applying the requirements of the Rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently

recognised under them: R (on the application of) Nagre v Secretary of State for the Home Department [2013] EWHC 720 (Admin);

In **MM & Ors, R (On the Application Of) v Secretary of State for the Home Department (Rev 1) [2014] EWCA Civ 985** the view was taken that it is necessary to apply a "proportionality test" with regard to the "exceptional circumstances" guidance in order to be compatible with the (human rights) Convention and in compliance with **Huang & Ors v Secretary of State for the Home Department [2005] EWCA Civ 105**.

In **Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL 27 (17 June 2004)** the court said that there are 5 questions that must be asked in considering the question of a breach of Article 8,

- (1) Is there an interference with the right to respect for private life (which includes the right to respect for physical and moral integrity) and family life?
- (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8
- (3) Is that interference in accordance with the law?
- (4) Does that interference have a legitimate aim?
- (5) Is the interference proportionate in a democratic society to the legitimate aim to be achieved.

25. I find that the Appellant has not established that he has a family life in the UK interference with which would be sufficiently serious as to engage Article 8. I find that he has established a private life here.
26. Recent amendments to the Nationality Immigration and Asylum Act 2002 require a decision maker considering Article 8 ECHR to consider the public interest and set out relevant factors to be taken into account.

**117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.



(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to –

- (a) a private life, or
- (b) a relationship formed with a qualifying partner,  
that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

- (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
- (b) it would not be reasonable to expect the child to leave the United Kingdom.

27. I have taken these factors into account. I accept that the Appellant has formed a relationship with Ms Arshad's children but I do not accept that this is a parental relationship. I do have a letter from Ms Arshad's elder son, who is an adult, asking that the Appellant be allowed to remain here and saying that his younger brother needs him here but in all the circumstances and bearing in mind the lack of evidence of a genuine and subsisting relationship between the Appellant and Ms Arshad I am not satisfied that it would be in the child's best interests for the Appellant to remain in the UK. Although the Appellant's relationship with Ms Arshad could be reasonably be said to be part of the Appellant's private life I am not satisfied that it is a genuine relationship. If I am wrong about that I consider that it would not be unreasonable for the Appellant to return to Pakistan and make an application to enter the UK under Appendix FM as the partner of Ms Arshad whom he was adamant that he wants to marry as soon as possible.
28. There was some reliance by the Appellant on delay by the Respondent in dealing with his application but I do not consider this to have been significant enough to affect the development of a family or private life in the UK.

29. I find that the interference with the Appellant's Article 8 rights that would result from his removal from the UK would not be disproportionate to the need for effective immigration control in the UK.

**NOTICE OF DECISION**

The determination of the First-tier Tribunal having been set aside is replaced with this decision.

The appeal is dismissed under the Immigration Rules.

The appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed

Date: 10<sup>th</sup> November 2014

N A Baird

Deputy Upper Tribunal Judge Baird