



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

Appeal Number: IA/50046/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 1 July 2014**

**Determination**

**Promulgated**

**On 1 August 2014**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

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

Appellant

**and**

**ZULFIQAR ALI SHAH**

Respondent

**Representation:**

For the Appellant: Mr M Diwnycz, a Senior Home Office Presenting Officer

For the Respondent: Mr M Shah, Maz Shah Legal, Bradford

**DETERMINATION AND REASONS**

1. The respondent, Zulfiqar Ali Shah, was born on 7 January 1956 and is a citizen of Pakistan. I shall hereafter refer to the respondent as the appellant and to the appellant (the Secretary of State for the Home Department) as the respondent (as they were respectively before the

First-tier Tribunal). The appellant had appealed to the First-tier Tribunal against a decision of the respondent dated 30 November 2013 to remove him from the United Kingdom. The appeal was brought on Article 8 ECHR grounds. The First-tier Tribunal (Judge N P Dickson) in a determination promulgated on 25 April 2014, allowed the appeal. The respondent now appeals, with permission, to the Upper Tribunal.

2. At the outset of the hearing, Mr Diwnycz, for the respondent acknowledged that the grant of permission appeared to have been based upon a misapprehension by Judge Page who had written [3]:

There is an arguable error of law in the determination where the judge found that the appellant's application should not have been dealt with under Appendix FM. The refusal decision dated 30 November 2013 refused an application made by the appellant's solicitors on 5 November 2012. Appendix FM did apply as this came before us on 9 July 2012.

3. In his determination, at [40], Judge Dickson had written:

It is clear on any reading of this correspondence [between the appellant and the Secretary of State] that there is an outstanding application or even applications since 2004. The matter should have been dealt with under the Rules in force at that time. It should not have been dealt with under Appendix FM that came into effect on applications on or after 9 July 2012.

4. Notwithstanding the judge's finding at [40] he went on [41] to consider the matter on the basis that Appendix FM "is relevant." Thereafter, he went on to apply the principles of *Gulshan (Article 8-new rules-correct approach)* [2013] UKUT 640 (IAC). He found that there were compelling circumstances which required him to consider Article 8 outside the Rules.
5. It is clear that Judge Dickson has carried out a thorough analysis but that his primary finding is that Appendix FM did not apply to an application which appears to have been made as long ago as 2004. I do not find that he has erred in law in that respect. Even if that is not correct, the judge has prudently considered the appeal under the new Appendix FM in force since July 2012 and has given good reasons for finding that, whilst the appellant may not qualify under the Rules, there were compelling reasons to consider Article 8 outside the Rules. I find, therefore, that the judge's approach to the appeal was not flawed by legal error for the reasons asserted in the grounds of appeal or at all.
6. Paragraphs [2-3] of the grounds refer respectively to the judge's treatment of the appellant's partner's medical conditions (noting there was sufficient medical treatment in Pakistan) and to the possibility that the appellant's partner could return to Pakistan with the appellant whilst the appellant applied for entry clearance. Judge Dickson has dealt in detail with the partner's medical conditions but also [42] with the possibility of the partner and the appellant returning to Pakistan together. I find his conclusion that it is "unrealistic for the respondent to suggest that a British who has never lived outside England and with her medical

conditions should... be uprooted to Pakistan” was available to him on the evidence.

7. Significantly, the judge gave weight in the Article 8 assessment to what he describes as “the unconscionable delay” by the Home Office in dealing with an application made in 2004. It is clear from the determination [44] that the delay in this instance weighed heavily in favour of the appellant in the proportionality assessment. Given the length of the delay, I find the judge’s analysis to be fair and reasonable.
8. The judge has reached a conclusion which was open to him on the evidence in this particular case. It was open to the judge to attach weight to the various factors (including delay) which weighed in favour of the appellant. I can find no reason in law to interfere with his conclusion.

### **DECISION**

9. This appeal is dismissed.

Signed

Date 20 July 2014

Upper Tribunal Judge Clive Lane