



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: OA/09168/2013  
OA/09162/2013

THE IMMIGRATION ACTS

Heard at Field House  
On 27 March 2014

Determination Promulgated  
On 31 March 2014  
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Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SAIMA IQBAL  
MEERA IQBAL

Respondents

Representation:

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer  
For the Respondents: Ms Jarvis-Legg, instructed by Nationwide Solicitors

DETERMINATION AND REASONS

The Appeal

1. This is an appeal by the Secretary of State against a determination dated 21 January 2014 of First-tier Tribunal Judge Gillespie which allowed the Article 8 appeals of the respondents.
2. For the purposes of this determination, I refer to the respondents as the appellants and to the Secretary of State as the respondent, reflecting their positions as they were before the First-tier Tribunal.

## Background

3. The background to this matter is that the two appellants are nationals of Pakistan. The first appellant was born on 18 June 1978 and the second appellant, her daughter, was born on 23 March 2008.
4. The first appellant is married to Mr Shoaib Iqbal, a British national. The marriage took place in 2004 but the first appellant continued to live in Pakistan afterwards, the sponsor visiting her there twice a year. After the couple had their daughter, Mr Iqbal continued to visit and the family also went on pilgrimage together to Mecca.
5. On 28 December 2012, the appellants applied for entry clearance to join the sponsor. The applications were refused on 12 March 2013.
6. It is common ground that the appellants could not succeed under the Immigration Rules. This was because they could not meet the financial requirements. Specifically, and as set out by Judge Gillespie at [11], Mr Iqbal did not provide the specified documents showing his income as a self-employed person as required by paragraph 7 of Appendix FM-SE. Ms Jarvis-Legg conceded in terms before me that the appeal under the Immigration Rules had to fail and had been correctly refused by Judge Gillespie.
7. For completeness sake I should also indicate that it was not disputed before me that the marriage was genuine and subsisting, as found by Judge Gillespie.

## Error of Law

8. Having refused the appeal under the Immigration Rules, the First-tier Tribunal allowed the appeal on Article 8 grounds. At [12] Judge Gillespie set out the correct legal test when addressing Article 8 in appeals that also concern the Immigration Rules in force since 9 July 2012.
9. The citation of case law included R (Nagre) v SSHD [2013] EWHC 720 (Admin) which Judge Gillespie summarised, thus:

“... if after application of the rules an appellant is found not to meet the requirements of the same then, if there remain arguably good grounds for granting leave to remain, it is necessary to go on to consider whether there are compelling circumstances not sufficiently recognised under them which would justify the grant of protection under article 8.”
10. The First-tier Tribunal judge did not, however, go on to identify the “arguably good grounds” that could allow for a second stage Article 8 assessment applying the questions from Razgar v SSHD [2004] UKHL 27.
11. Instead, the passage from [12] set out above is followed immediately by:

“With this in mind, I consider whether, in the light of the precise rule relied upon and the extent to which the appellants fail to meet the requirements of the same,

there are compelling circumstances not sufficiently recognised under the rule which justify the grant of protection under article 8.”

12. Having set out the need for “arguably good grounds”, therefore, the determination leapfrogs any identification of such and moves on immediately in [13] to a second stage Article 8 assessment, addressing the Razgar questions of whether family life exists and so on.
13. Further, as correctly set out in [12], when conducting the second stage Article 8 assessment there is a requirement for “compelling circumstances” for the appeal to succeed. Here, the judge identified two relevant factors. The first, at [16], was the “the rigidity of the requirement of specified documents”. At [17] the best interests of the child were found to be in being with both parents.
14. In support of the first point, the First-tier Tribunal Judge relied on MM v SSHD [2013] EWHC 1900 and the comments of Mr Justice Blake therein on the proportionality of the minimum financial requirement for spouses. This case does not turn on the level of the minimum financial requirement. MM v SSHD examines in detail a wide range of factors that lead to the conclusion that the financial threshold was disproportionate. Judge Gillespie merely states at [16] that:

“I consider that similar disproportionate intrusiveness is demonstrated in the peculiar circumstances of this particular case by the rigidity of the requirement of specified documents”.
15. That is merely disagreement with the documentary requirements of the new Rules without there being anything at all to show that the particular requirements here were disproportionate or other such that the full force of the statutory provisions did not apply. It cannot amount to a compelling circumstance that outweighs the public interest in effective immigration control and proper application of the Immigration Rules. The approach of the First-tier Tribunal to the new Rules in the proportionality assessment is incorrect and amounts to an error on a point of law.
16. Also, when assessing the best interests of the child, Judge Gillespie indicates at [17] that he had no evidence on the point before him. He goes on, however, to make a finding but one which he accepts is an “assumption”, that the best interests of this child are to be with both parents. It is difficult to see how that finding was open to him where there was nothing stating it to be so and nothing to suggest that the welfare of the child was not being equally well-served by living in Pakistan with her mother, seeing her father twice a year and having indirect contact with him. It is also difficult to see how a best interests assessment made on such an uninformed basis could be found to amount to a compelling factor that could outweigh the public interest effective immigration control.
17. In summary, therefore, the Article 8 assessment was in error, sufficiently so in my view that the decision of the First-tier Tribunal could not stand.


18. Ms Jarvis-Legg pointed out quite correctly that the respondent's written grounds on which permission was granted were not in the terms set out above. In my judgement, however, the error in approach is so clear and fundamental that it amounts to a "Robinson-obvious" point which I had to, and did, take.
19. I therefore found that the determination of First-tier Tribunal Judge Gillespie disclosed an error on a point of law such that it had to be set aside and remade.

#### Re-making of the Article 8 Appeal

20. It may already be clear from the matters set out above that I found nothing in the circumstances of this family that fell outside the provisions of the new Rules that could justify a second stage Article 8 assessment. There are no "arguably good grounds" for doing so. There was no evidence addressing the best interests of the child and nothing to indicate that her welfare was not being properly addressed in her current circumstances such that a second stage Article 8 assessment is required. Failing to meet the Immigration Rules because of the stringency of the documentary requirements of the Immigration Rules is not a factor that can justify of itself a second stage Article 8 assessment.
21. It is difficult to see how a second stage Article 8 assessment could assist the appellants, in any event. As above, there was no evidence to show that the best interests of the child lie in being in the UK with both parents. In addition, it is open to the appellants to reapply at any time for entry clearance. Even if it could be said with certainty that it was in the second appellant's best interests to live with both parents in the UK, that primary factor would have to be weighed against the limited interference arising from the decision where there is an opportunity to apply again and the strong public interest in maintaining an effective immigration system by consistent application of the Immigration Rules. The failure to meet the Immigration Rules arises as the application was made at a time sponsor had not been self-employed long enough to be able to provide the specified evidence. That cannot affect the weight to be afforded to the Immigration Rules in any proportionality assessment.

#### Decision

16. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
17. I re-make the appeal, refusing it on all grounds.

Signed:   
Upper Tribunal Judge Pitt

Date: 27 March 2014