



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

Appeal Number: IA/00084/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 12th August 2015**

**Decision & Reasons Promulgated
On 28th August 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

**MR WAHEED
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Singh of Counsel, instructed by Kabir Ahmed & Co Solicitors

For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Waheed, was born on 9th February 1985 and is a male citizen of Pakistan. On 12th December 2014 the Respondent refused to vary his leave to remain in the UK, outside the Immigration Rules, and gave directions for his removal under Section 10 of the Immigration and Asylum Act 1999. In addition the Respondent certified the claim as clearly unfounded under Section 94(2) of the Nationality Immigration and Asylum Act 2002.

2. The Appellant had applied on 31st October 2014 for leave to remain exceptionally under Article 8 ECHR (right to family/private life).
3. He appealed the refusal by the Respondent to vary his leave to remain, to the FtT (Judge Mensah). In a decision promulgated on 23rd April 2015 she dismissed the appeal. The Appellant now appeals with permission to the Upper Tribunal.
4. The Appellant entered the United Kingdom in January 2010 as a Tier 4 (Student) with leave granted only until June 2014. In 2012, he began a relationship with Muneeba Kauser, a British citizen. She is currently expecting their child.
5. In July 2014 the Appellant's leave to remain was curtailed because of irregularities with the college attending. It is said that he was not aware of the curtailment of leave. However his original leave to remain was only valid in any event until June 2014. Needless to say he did not leave the UK on the expiry of his leave.
6. The application for leave to remain outside the Rules was dated 31st October 2014. It claimed that the Appellant could not return to Pakistan and continue his private life/family life with Ms Kauser there because both sets of their respective parents disapproved of the relationship.
7. It is said that, in October 2014, when Ms Kauser's parents discovered the relationship, they kept her in a locked room. Somehow she was able to escape and both she and the Appellant reported the matter to the police. Ms Kauser was found a place in a refuge and the Appellant was arrested as an overstayer.
8. By October 2014 the Appellant, having been released by the police, moved to Scotland accompanied by Ms Kauser. The couple married in an Islamic marriage ceremony and returned to Leeds in late October, when he made the application for leave to remain.
9. The application for leave added that Ms Kauser could not travel to Pakistan. She has other family members living there and she would be in danger from them because of her relationship with the Appellant. In addition the Appellant's own family members will not accept her as she is 'westernised' and they are a 'conservative' family.
10. At the hearing before the FtT, it was accepted that the Appellant could not meet the requirements of the Immigration Rules, notably Appendix FM and 276ADE. The Judge noted further that there was no prospect of him being able to do so, because Ms Kauser said in evidence, once her child is born, she will not be able to work, as she will be caring for the child.
11. The Judge went on to conclude that,
"Taking all of the evidence together I firstly find no reason to depart from the Immigration Rules and no exceptional circumstances however, even if I

were to depart from the Immigration Rules and go on to consider Article 8 I find it is not disproportionate to remove the Appellant.”

12. The Appellant now asserts that the Judge’s application of the proportionality test is flawed. Ms Singh submitted that the Judge’s failure to follow the five stage approach in *Razgar*, led her to refrain from carrying out a proper analysis of Article 8 ECHR. This in turn led to a failure to give proper consideration and weight to what is asserted on behalf of the Appellant, namely that Ms Kauser cannot go (Ms Singh’s emphasis) to Pakistan.
13. I find I disagree with Ms Singh’s submissions. I find that the grounds and the grant of permission both fall into error. The line of authorities established by *MF (Nigeria)*, *Gulshan* and *Nagre* make it clear that the circumstances of the majority of applicants for leave to remain will fall within the provisions of the complete code as regards Article 8 ECHR now provided for in the Immigration Rules. Only in those cases in which the circumstances are particularly compelling and, crucially, “not sufficiently recognised by the Rules” (in the sense that the circumstances are so unusual as not to have been anticipated by the Rules), should it lead a Judicial decision maker to consider Article 8 ECHR outside the Immigration Rules. That test requires the exercise of a judicial discretion; it does not require a full-scale application of Article 8 ECHR jurisprudence or a detailed assessment of proportionality. If a Judge were required to carryout such an analysis, then nothing would be achieved by the application of the *Gulshan* test at all and the very freewheeling Article 8 assessment deprecated in that case would become the norm.
14. I find, therefore, that the judge did not fall into error by refraining from carrying out a full scale assessment of proportionality; it is plain by reading the text of the decision that she exercised her discretion not to consider Article 8 ECHR outside the Immigration Rules and did so judicially. There is no suggestion that she had regard to irrelevant matters in exercising her discretion nor has she failed to take into account all relevant facts. A plain reading of the determination shows that.
15. She had proper regard for the fact that this Appellant could not meet the Immigration Rules. Significantly, the Judge was aware that the Appellant, notwithstanding his precarious immigration status, had not left the UK when his leave expired, had chosen to start a relationship in the UK and together with Ms Kauser decided to start a family.
16. The Judge took full account of the reasons why it was said Ms Kauser could not accompany the Appellant to Pakistan. She discounted those reasons giving adequate reasons why she did so. There is nothing perverse or irrational in her reasoning. Article 8 does not provide for family life to be pursued in a jurisdiction of choice.
17. In so far as the Judge’s reasoning is concerned I can discern no error of law. The grounds therefore do not have merit. The only part where the

Judge has perhaps erred is in the loose language she has employed at [16] where she says,

“I apply section 117 of the Immigration Act 2014 and weigh the public interest in maintaining effective Immigration control in protecting the public purse against the appellant’s desire to remain in the United Kingdom and pursue a life here with his partner.”

18. That in my judgment was simply a matter of form rather than substance. The Judge carried out a detailed assessment of the Appellant’s case and I cannot envisage any Judge coming to a different conclusion on the facts of this appeal. Therefore any error in form is not material.

Decision

19. The appeal to the Upper Tribunal is dismissed. The decision of the First-tier Tribunal promulgated on 23rd April 2015 dismissing Mr Waheed’s appeal stands.

No anonymity direction is made

Signature

Judge of the Upper Tribunal

Dated

Fee Award

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

Signature

Judge of the Upper Tribunal

Dated