



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/10740/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 12 March 2015

Determination Promulgated
On 13 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MOHAMMAD IKRAM BAIG

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Hosein, AQ Archers solicitors

For the Respondent: Mr M Shilliday, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a national of Pakistan, appealed to the First-tier Tribunal against the decision of the Secretary of State to refuse his application for leave to remain on the basis of his family life with Asmayati Asmayati, an Indonesian citizen with Indefinite Leave to Remain in the UK. First-tier Tribunal Judge Griffith dismissed the appeal and the appellant now appeals with permission to this Tribunal.
2. The appellant's case is that he entered the UK in September 2003 with a visit visa valid for six months. He did not leave the UK. He met Ms Asmayati in 2011 and they married in an Islamic traditional ceremony on 10 July 2011. He was arrested on 1 August 2013 and detained until 21 October 2013. He applied on 2 August 2013 for leave to remain as the spouse of Ms Asmayati. The appellant asserts that his family in Pakistan do not

approve of his wife and that he and his wife would find it difficult to settle in Pakistan without the help of his family. It is asserted that they could not relocate to Indonesia.

3. In the reasons for refusal letter the respondent accepted that the appellant and his wife have a genuine and subsisting relationship. The respondent considered Ex 1 of Appendix FM and decided that there are no insurmountable obstacles to the appellant's family life with his partner continuing outside the UK. The respondent considered paragraph 276ADE and concluded that the appellant does not meet the requirements of paragraph 276ADE (vi) as he continues to have ties in Pakistan.
4. First-tier Tribunal Judge Griffith heard oral evidence from the appellant and his wife and concluded that their evidence as to the difficulties they would face in Pakistan amount to economic difficulties and to the associated disruption to their daily lives of moving to live in Pakistan. She concluded that whilst removal to Pakistan would be 'difficult and disruptive' such difficulties would not amount to 'insurmountable obstacles' [37].
5. This assessment is challenged in the grounds of appeal on the basis that the Judge failed to give proper weight to a number of factors. Mr Hosein accepted that the grant of Permission to Appeal is limited to the sole issue as to whether the Judge had erred in failing to consider whether the appellant's wife would be afforded entry clearance to Pakistan and in failing to give consideration to the fact that the appellant and his wife are different nationalities in considering the difficulties they would face in Pakistan.
6. Mr Hosein accepted that the issue of entry clearance to Pakistan or Indonesia was not raised by the appellant at the hearing in the First-tier Tribunal and that there was no evidence before the First-tier Tribunal Judge as to any possible difficulties obtaining a visa. However he submitted that the Judge should have taken judicial notice of the fact that the appellant's wife would be required to obtain a visa.
7. However paragraph 14 of the reasons for refusal letter reminded the appellant that the onus is on him to show that it is not possible for his wife to relocate to Pakistan in order to demonstrate that this would be an insurmountable obstacle. The appellant did not raise this in the First-tier Tribunal let alone provide any evidence to demonstrate that his wife could not relocate to Pakistan. In my view even if the Judge had taken judicial notice of the requirement for either the appellant or his wife to obtain a visa to go to Pakistan or Indonesia it would have been beyond the realms of judicial notice to have reached any conclusions as to the likelihood of either party being refused such a visa. I do not accept that the Judge could have reached a finding on this issue in the absence of evidence.
8. Mr Hosein relied on the decision of the High Court in Aliyu & Another v SSHD [2014] EWHC 3919 (Admin) where Deputy High Court Judge Grubb said:

“65. In my judgment, it would be sufficient for the Secretary of State to take the factors I have identified into account in assessing whether there were "exceptional circumstances" applying the criterion of whether the circumstances were "compelling" such as to produce "unjustifiably harsh consequences" so as to outweigh the public interest.”

9. Mr Hosein submitted that relocation to Pakistan would lead to unjustifiably harsh consequences for the appellant and his wife. However the Court in Aliyu was dealing with the consideration of an Article 8 claim outside the Rules and refers to a completely different test to that of 'insurmountable obstacles'.
10. The First-tier Tribunal Judge in this appeal concluded that the appellant and his wife would face difficulties and disruption in relocating to Pakistan but took into account a number of factors including the fact that they both speak English, they have relocated in the past – the appellant's wife spent six years working in Singapore before coming to the UK where she is employed, they are both in good health and have work experience and they would not be destitute in Pakistan even if they did not have the support of the appellant's family. The First-tier Tribunal Judge acknowledged that the appellant and his wife would prefer to remain in the UK and that their standard of living in Pakistan might not be commensurate with that they are currently enjoying in the UK, however the Judge concluded that these difficulties would not amount to insurmountable obstacles. This was a finding properly open to the Judge on the basis of the evidence before her.
11. Accordingly I am satisfied that the First-tier Tribunal Judge did not make an error of law in the determination of this appeal.

Conclusion:

The making of the decision of the First-tier Tribunal did not involve the making of an error on point of law.

The decision of the First-tier Tribunal shall stand.

Signed

Date: 12 March 2015

A Grimes
Deputy Judge of the Upper Tribunal