



**First-tier Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/30214/2013

**THE IMMIGRATION ACTS**

**Heard at Birmingham Sheldon  
Court  
On 18<sup>th</sup> March 2015**

**Determination Promulgated  
On 15<sup>th</sup> April 2015**

**Before**

**JUDGE OF THE FIRST-TIER TRIBUNAL JUSS**

**Between**

**MR MUHAMMAD SHERAZ  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr H Sarwar (Counsel)

For the Respondent: Ms L Curran (HOPO)

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan who was born on 12<sup>th</sup> February 1980. He appeals under the provisions of Section 82 of the Nationality, Immigration and Asylum Act 2002 against the decision of the Respondent dated 3<sup>rd</sup> July 2013, to refuse to vary leave of the Appellant on the basis of

his relationship with Ms Sabina Kausar, a British citizen present and settled in the UK, the decision being made outside the Immigration Rules.

2. I had the bundle submitted for the Appellant.
3. It is a feature of this case, that there has been a previous appeal before Judge Pirotta, which was promulgated on 10<sup>th</sup> March 2014, which resulted in a successful appeal by the Appellant whereby the Upper Tribunal, on 15<sup>th</sup> April 2014, observed how the judge had appeared to go behind a concession made by the Secretary of State, that the Appellant was in a genuine and subsisting relationship with Ms Sabina Kausar, although at the time of the decision, not married to her. That grant of permission, led to an appeal before Judge Davey, who accepted that the Secretary of State had properly withdrawn any "concession" made with respect to the Appellant being in a genuine and subsisting relationship with the Sponsor, Sabina Kausar. Mr Sarwar, in the hearing before me, accepted that this was the case, and no further point was taken on this.
4. In giving his evidence, the Appellant, adopted his two witness statements. These were dated 13<sup>th</sup> February 2014 (at pages 122 of the first bundle) and dated 11<sup>th</sup> March 2015 (the latest bundle) and a correction was made with respect to the reference to the partner having passed away on account of a "lung cancer" being changed to "a liver cancer". No further questions were asked by Mr Sarwar.
5. In cross-examination, Ms Curran asked the Appellant why he was afraid to return back to his family in Peshawar. He explained that he is afraid of his former family in the Punjab. He was then asked about any problems with his own family in Peshawar. He said that he had married Ms Sabina Kausar contrary to their wishes and they were unhappy with this and so he could not return back to the family house in Peshawar where he had previously lived with his mother and sister. He was asked whether his wife, Sabina Kausar, was aware that his status was "precarious" in that he had come as a student and had then stayed on. He said that he could always apply for an extension as a student, although his wife was perfectly aware that his status was only that of a student. There was no re-examination.
6. I made it plain to the Appellant that I do not accept his evidence in two respects. I do not accept that he was under any threat whatsoever from people in Punjab. I also do not accept that he had any difficulties whatsoever with his own family in Peshawar on account that he had married against their wishes. If anything, the opposite was likely to be the case, given that the marriage in the UK would have given the Appellant the benefit of being able to remain here, with which his family would only have been only too happy.
7. No further questions were asked by either side.

8. The second witness was Ms Sabina Kausar. She adopted her witness statement which was signed before me on 18<sup>th</sup> March 2015. She also amended her witness statement to say that the death of the former partner had occurred due to liver cancer. No further questions were asked in examination-in-chief.
9. In cross-examination, the witness was asked about her son, Kashif Khan, who is presently 16 years of age, and the youngest of her two children, the two eldest now being at university. She explained that she and the son had not been in touch with the former partner of Ms Sabina Kausar since 2002. She was asked about the emotional problems that Kashif Khan had, following the witness's separation from her partner, which was on account of being in an abusive relationship. She explained that the last time he had any problems was between 2006 and 2011. There had been no emotional problems since 2011. She was asked about her own mother. She confirmed that her own mother was a British citizen and that she was a carer of her mother because her mother had problems. Ms Curran then asked the witness whether she would go with the Appellant to Pakistan if he had to go there in order to make a spouse's application to re-enter. She paused for a moment. She thought it through. Then she said that she would not go because her son, Kashif Khan, was presently doing GCSEs at school, being aged 16, and his examinations were imminent, and her leaving him in any way would be disruptive to his studies.
10. In re-examination the witness was asked about the allowance that she got and she explained that she had to fill in forms and to have an assessment made before the carer's allowance was made.
11. The third witness was Kashif Khan. He adopted his witness statement at pages 7 to 8 of the bundle, and the witness statement was signed before me on 18<sup>th</sup> March 2015. There was no examination-in-chief.
12. In cross-examination the minor witness was asked about his uncles in the UK. He said that he sees them occasionally. He has a grandmother also whom he sees. He was asked what would happen if his stepfather had to return to Pakistan to make an application, so that he was temporarily separated from him. He explained that, "I would be worried because I am doing GCSEs and there would be no-one at home to look after me and my mother". There was no re-examination.
13. In her closing speech, Ms Curran relied upon the note dated 6<sup>th</sup> June 2014, taken by Mr Smart, a Senior Home Office Presenting Officer, during the hearing before Judge Davey in the Upper Tribunal, which confirmed that there was no concession made in relation to a genuine and subsisting relationship between the Appellant and Ms Sabina Kausar. Mr Sarwar again stated that there was no issue taken in relation to this. Otherwise, she relied upon the refusal dated 25<sup>th</sup> June 2013. She explained that at the time of the decision there was no evidence that the parties were married. The application was made on the basis of a partner's relationship, and there was no evidence that they had been living together

for two years, and so the application was rejected. Today they are married. Nevertheless, it is not enough to be married. It is not enough to be married to show that one has a genuine and subsisting relationship. This was still a matter that fell for me to be determined.

14. Even so, it could not be said that it was not reasonable to expect the husband and wife to return to Pakistan if the husband needed to go there in order to make an application to come back into the country. This was only a temporary exercise. Ms Curran began making submissions on the basis of paragraph 276ADE but Mr Sarwar again interjected to say that no issue was taken in relation to this.
15. She then moved on to a consideration of Section 117B of the 2014 Act, which refers to the fact that “little weight is to be given” to any family life developed when the status of the applicant is “precarious”. She submitted that Ms Sabina Kausar knew that the Appellant’s status was precarious. If he had to go to Pakistan this would only be temporary. She did not have to accompany him. This was a matter of choice for her. The fact was that Article 8 was a “qualified right” and one could not insist upon using Article 8 to remain in this country as a matter of choice.
16. As to the interests of Kashir Khan, the stepson, these had been taken into account but this does not mean that he has to go to Pakistan, or that his remaining in the UK will disrupt his Article 8 rights. The arrangement would only be temporary. He had a grandmother in this country in any event. He saw her on a regular basis. He may have had emotional problems in the past. He does not have any now. On balance, the considerations did not fall in favour of allowing the Appellant to remain in the UK. She asked me to dismiss the appeal.
17. For his part, Mr Sarwar relied upon his helpful skeleton argument. He said that the primary route had been the “partner’s route” on the basis of which the application had been made (addressed at page 2 of the skeleton argument). When the application was submitted they were not married. This is uncontroversial.
18. However, if the Appellant was now married, there is no need to look at “exceptional circumstances” and the only question was whether there were “insurmountable obstacles”. There were because Kashif Khan was a British citizen and so was his mother. In **LD**, Mr Justice Blake had made it clear that “very weighty reasons are needed for separating a parent from a minor child”. This applied as much to his stepfather as it did to his mother. It was clear that he had a genuine and subsisting relationship here with his stepfather and his mother. It was clear that the Appellant had a genuine and subsisting relationship with Sabina Kausar.
19. Accordingly, it was for the Secretary of State to identify an alternative care arrangement if the Appellant’s wife had to leave Kashif Khan and go to Pakistan for the time that he had to be there in order to make an

application to re-enter. If she did not go, then this would impact upon her relationship, as a British citizen, with Mr Sheraz, the Appellant.

20. Finally, he relied upon paragraph 117B(6) in that, once it was accepted that there was a genuine and subsisting relationship between the Appellant and the “qualifying child”, then all I had to do was to conclude that it would not be reasonable to expect a British citizen child, who had never been to Pakistan, to relocate there in order to enjoy his Article 8 rights with his stepfather.
21. I have given careful consideration to all the documents before me and to the oral evidence and submissions, which are set out in the Record of Proceedings.
22. I find that the Appellant discharges the burden of proof that is upon him for the reasons that I now give. First, I find that it is plain that there is a genuine and subsisting relationship between the Appellant and Ms Sabina Kausar. I make this finding on a balance of probabilities. This is a case where the application was originally made on the basis that they were living together, though not at the time married. Since then, they have been married, and are living together, and there is nothing untoward about their relationship. Second, Ms Sabina Kausar, has explained that she would not leave the UK to go to be with her husband in Pakistan while he returned there. However, she is plainly worried. She has also said that there is no certainty in his being able to re-enter the country as she would be left without her husband. Third, and even more importantly, the evidence from Master Kashif Khan, a British citizen child in the UK, is that not only would he not himself be prepared to go to Pakistan given that he has never lived there, but that he would be troubled by the fact that, two months away from his GCSE exams, his mother would be left without a head of the house in the UK. The line of cases under Section 55 of the BCIA, make it quite clear, that not only are the interests of the child a primary consideration, but that active steps must be taken to ensure that these interests are properly identified and observed.
23. In circumstances where the public interest considerations do not militate against the Appellant’s removal in any way, it is noteworthy that paragraph 117B(6) makes it clear that
 

“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”.
24. I have no hesitation in finding that the child, Kashif Khan, is a “qualifying child” and that someone who has had a troubled earlier life, and has only now managed to come to terms with it since 2011, that it would not be reasonable to expect him to leave the United Kingdom. He is two months away from his GCSE exams. He is doing relatively well. The risk of

disruption to his life, as made evidently clear in his own evidence before me, is something that cannot be ignored.

25. In **Hayat [2012]** the court made it clear that

“Once there is an interference with family or private life, the decision maker must justify the interference. Where what is relied upon is an insistence on complying with the formal procedures that may be insufficient to justify even a temporary disruption to family life”.

I find that this applies here. Mr Sarwar has represented this Appellant with his customary charm and efficiency and the points have been well taken in his skeleton argument such that I am driven to conclude that this appeal must, in all the circumstances of this case, be allowed.

24. On the totality of the evidence before me, I find that the Appellant has discharged the burden of proof and the reasons given by the Respondent do not justify the refusal. Therefore, the Respondent’s decision is not in accordance with the law and the applicable Immigration Rules.

### **Notice of Decision**

25. The appeal is allowed.

26. No anonymity order is made.

Signed

Date

Judge Juss  
Judge of the First-tier Tribunal

11<sup>th</sup> April 2015

### **TO THE RESPONDENT** **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award of the whole amount that has been paid or is payable and hereby do so.

Signed

Date

Judge Juss  
Judge of the First-tier Tribunal

11<sup>th</sup> April 2015