



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/38206/2013**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision and Reasons**

**Promulgated**

**On: 17<sup>th</sup> April 2015**

**On: 02<sup>nd</sup> June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Imran Ahmad Khan Durrani  
(no anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

For the Appellant: Mr Chakmakjian, AMR Solicitors  
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of Pakistan date of birth 25<sup>th</sup> November 1969. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge Easterman) to dismiss his appeal against a decision to refuse to vary his leave and to remove him from the United Kingdom pursuant to s47 of the Immigration Asylum and Nationality Act 2006.
2. The Appellant's case before the First-tier Tribunal was that his removal from the UK would be a disproportionate interference with his Article 8(1) rights in the UK. He relied *inter alia* on the fact that he had been in the UK since 2002 and has established a private life including a business, the fact that he has a heart condition which

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<sup>1</sup> Permission was granted on the 13<sup>th</sup> February 2015 by First-tier Tribunal Judge VA Osbourne

requires treatment, and that he is in a relationship with a British woman.

3. It was conceded that the Appellant could not meet the requirements of any of the Immigration Rules. The First-tier Tribunal went on to consider the appeal on freestanding Article 8 grounds. It appears to have been accepted that the Appellant has established a private and/or family life in the UK since the determination goes straight to consideration of proportionality. The Appellant's health concerns are not considered to merit any great weight, since the Tribunal finds that there was no evidence that treatment was not available in Pakistan. As for the Appellant's private life the Tribunal accepts that he has his own business but finds that this could continue under the direction of someone else, possibly the Appellant's wife, who also works there. In relation to the claimed relationship the Tribunal finds as follows:

"59. However it was a relationship formed at the time when the appellant's status was precarious, his leave was predicated on his relationship with a different person, and as a result of the 2014 Act I place little weight on the current new relationship, either as a private or family life...."

The appeal was, accordingly, dismissed.

4. The grounds of appeal are:
  - i) The Tribunal made a material misdirection in law in its application of s117B (5) of the Nationality Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). S 117B(5) mandates that little weight should be given to a *private* life established when the person's leave is *precarious*; this is to be contrasted with s117B(4) which states that little weight should be given to either a private or *family* life established when the person was in the UK *unlawfully*. It is submitted that the Appellant's relationship with his current partner was established when he had limited leave to remain and so the Judge erred in attaching "little" weight to it.
  - ii) There has been a failure to consider relevant factors, in particular the impact of the Appellant's removal on his business, whether the impact on him of having to wind that business up and leave his life here would be disproportionate.
  - iii) The Tribunal erred in failing to give due consideration to whether it was reasonable to expect the Appellant's wife to relocate to Pakistan.
5. The Respondent opposes the appeal on all grounds. If there was an error in respect of (i) it is submitted that it is not material.

## My Findings

6. In granting permission Judge Osbourne comments that grounds (ii) and (iii) appear to be little more than disagreements with the conclusions reached in the determination. I would respectfully agree. The Tribunal clearly did consider the effect of the Appellant's removal on his business, because a specific paragraph is directed at that matter at paragraph 60. In respect of the Sanade point that the Appellant's wife could not be expected to relocate away from the UK it does not appear that the case turned on any such suggestion. The determination points out that if this is a genuine relationship the Appellant can return to Pakistan and make a proper application for entry clearance in that capacity. This was not a Chikwamba situation since at the date of the appeal the Appellant was not married according to UK law (having only contracted a *nikah*) and he had not lived with his partner for 2 years or more. It was therefore a reasonable conclusion for the Judge to have reached.
7. Permission was expressly granted in respect of ground (i). There is arguably an error at paragraph 59 of the determination in that the Judge appears to attach little weight to the relationship "as a result of the 2014 Act". I am not however satisfied that if that is an error, it is such that the decision should be set aside. That is because it is clear from the determination that the Tribunal attaches little weight to the relationship a) because it was formed at a time when the Appellant had limited leave to remain as a result of his alleged relationship with someone completely different and b) it had, at the date of the hearing, only subsisted for a matter of five months. On those facts the Tribunal was entitled to attach little weight to it regardless of what is said in the statute.

## Decisions

8. The determination of the First-tier Tribunal contains no error of law and it is upheld.

Deputy Upper Tribunal Judge Bruce  
17<sup>th</sup> April

2015