



IAC-FH-NL-V1

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

Appeal Number: IA/40925/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 12 August 2015**

**Decision & Reasons Promulgated
On 27 August 2015**

Before

**UPPER TRIBUNAL JUDGE BLUM
UPPER TRIBUNAL JUDGE JACOBS**

Between

**MR IKHLAQ AWAIS
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Puar, Counsel instructed by N.C. Brothers & Co Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought against the decision of Judge of the First-tier Tribunal Cheales who, in a determination promulgated on 23 January 2015, dismissed the appellant's appeal against the respondent's decision of 22 August 2014 refusing to grant him leave to remain in the United Kingdom on the basis of his family life relationships.

Background

2. The appellant, a citizen of Pakistan, date of birth 18 August 1986, arrived in the United Kingdom on 08 October 2011 as the dependent spouse of Ms Bimish, she being a Tier 4 (General) Student. The appellant's leave to remain was curtailed so that it expired on 27 June 2012 after the college his spouse was attending lost its licence. The appellant subsequently overstayed. In November 2012 the appellant left Ms Bimish and their children and moved in with Ms Munir and her two children. On 19 December 2012 the appellant was arrested in relation to allegations of sexual offences and assault directed to his former wife. On 22 April 2013 the appellant received a 12 month suspended sentence, a fine and a restraining order in relation to his former wife. The appellant and his former wife were divorced in May 2014.
3. The respondent made a decision to remove the appellant under section 10 of the Immigration and Asylum Act 1999, his human rights claim being refused. Due to a lack of evidence the respondent was not satisfied the appellant and Ms Munir had been living together in a relationship akin to marriage for a two year period prior to the date of his application. The respondent also rejected the appellant's claim to have established a private life within the terms of paragraph 276ADE of the immigration rules. The respondent gave brief consideration to factors outside the immigration rules but was not satisfied his removal would breach Article 8.

Appeal before the First-tier Tribunal

4. The appellant and Ms Munir gave evidence, both written and oral, before the First-tier Tribunal. A number of documents were also produced relating to a property on Wesley Road, Reading, including an IS.96 Temporary Admission letter, a restraining order issued against the appellant by the Berkshire Magistrates Court, and a number of utility bills.
5. The Judge did not accept the appellant and Ms Munir were in a genuine relationship. The Judge noted several inconsistencies in the evidence between the appellant and Ms Munir. This included discrepant evidence relating to whether Ms Munir's children had any contact with her ex-husband (the biological father of the children) and the distance the families lived from each other in Pakistan, an inconsistency relating to whether the appellant had a strong circle of friends, and the omission of any mention in any of the statements of a fear of ill-treatment from Ms Bimish's family in Pakistan, a point that had been mentioned for the first time in oral evidence. The Judge also relied on the failure of any friends to attend the hearing and the absence of any evidence from Ms Munir's two children, who were ten and twelve years old.
6. The Judge indicated that he took account of the correspondence addressed to both parties at the same address but, in light of the inconsistencies identified, was not satisfied the appellant and Ms Munir were in a genuine relationship.

The Grounds of Appeal

7. The Grounds contended that the Judge failed to make findings on material matters, in particular the type of relationship the appellant had with Ms Munir, failed to give adequate reasons for his findings, and gave weight to immaterial matters. It was claimed the various inconsistencies relied on by the Judge did not directly go to the core of the claimed relationship, and that the Judge gave insufficient consideration to the documentary evidence said to be indicative of cohabitation and therefore a genuine relationship.
8. In granting permission to appeal the Deputy Upper Tribunal Judge Chapman found it arguable that the Judge failed to provide reasons why, despite making reference to correspondence addressed to both the appellant and Ms Munir at the same address, she did not find the relationship genuine and subsisting.

Error of law

9. At the commencement of Mr Tufans's submissions in reply to those of Mr Puar, he indicated that he had located in the Home Office file a 'Criminal Visit History' document relating to visits by Ms Munir to the appellant when he was detained at Colnbrook IRC. This document had never previously been disclosed to either the appellant or the First-tier Tribunal.
10. Having risen to consider the 'Criminal Visit History' document we indicated to the parties on our return that we were satisfied the decision of the First-tier Tribunal was, by reasons of the previous non-disclosure of this document, vitiated by material error of law.
11. We are very grateful to Mr Tufan for bringing this document to our attention. He did so as part of his duty of candour to the Tribunal. We are satisfied that this document, which is *prima facie* reliable, was relevant to the assessment of the genuineness of the relationship between the appellant and Mrs Munir. The letter suggests that Ms Munir regularly visited the appellant, and for relatively lengthy periods on each occasion, when he was detained. The dates of attendance match the dates in the various bus tickets provided by Mrs Munir to the First-tier Tribunal. Although reference is made to Mrs Munir as a 'friend', and we are mindful of the possibility that she may have visited in that capacity only, we are satisfied that a judge, having regard to this document and properly directing him or herself, may have been entitled to conclude that the relationship was more intimate.
12. We consequently find that there has been a material procedural error of law. The Home Office Presenting Officer representing the Respondent before the First-tier Tribunal failed in his or her duty of candour or duty to co-operate with the Tribunal under the overriding objective. This may have

been inadvertent, but fairness requires that the relevant evidence of the visits should have been disclosed to the appellant at the hearing and brought to the Judge's attention. Had the First-tier Tribunal Judge had regard to this letter, we cannot safely say that he would inevitably have still concluded that the relationship was not genuine.

13. We are therefore minded to allow the appeal on the basis that there has been a material error and to remit it back to the First-tier Tribunal to enable full consideration to be given to this evidence and any other evidence that may be provided. It is clear however that the inconsistencies that occurred in the First-tier hearing are matters that any future judge is going to take into consideration in determining the appeal. We therefore remit the appeal to a judge other than Judge Cheales.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law.

The appeal is remitted back to the First-tier Tribunal for fresh consideration in front of a Judge other than Judge Cheales.

No anonymity direction is made.



Signed
Upper Tribunal Judge Blum

Date