



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/12624/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

<b>Heard at</b>	<b>Centre</b>	<b>City</b>	<b>Tower,</b>	<b>Decision</b>	<b>&amp;</b>	<b>Reasons</b>
<b>Birmingham</b>				<b>Promulgated</b>		
<b>On 5<sup>th</sup> June 2017</b>				<b>On 20<sup>th</sup> June 2017</b>		

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**MAZHAR HUSSAIN**  
(ANONYMITY ORDER NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Howard of Fountain Solicitors

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of Judge Law of the First-tier Tribunal (the FtT) promulgated on 12<sup>th</sup> July 2016.
2. The Appellant is a male citizen of Pakistan born 12<sup>th</sup> February 1985. In August 2015 he applied for leave to remain in the United Kingdom. His application was based upon his family and private life. The Appellant is married to a British citizen, to whom I shall refer as the Sponsor.

3. The application was refused on 18<sup>th</sup> November 2015. The Respondent considered Appendix FM of the Immigration Rules, refusing the application because there were no insurmountable obstacles to family life between the Appellant and Sponsor continuing outside the United Kingdom.
4. The application was considered with reference to paragraph 276ADE(1) in relation to the Appellant's private life. It was noted that he had only lived in the United Kingdom since 19<sup>th</sup> June 2012. He had not demonstrated that there would be very significant obstacles to his integration into Pakistan.
5. The Respondent considered Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention), not accepting that the application disclosed any exceptional circumstances, and therefore it was concluded that it would not be appropriate to grant leave to remain pursuant to Article 8 outside the Immigration Rules.
6. The appeal was heard on 5<sup>th</sup> July 2016. After hearing evidence from the Appellant and Sponsor, the appeal was dismissed on all grounds.
7. The Appellant applied for permission to appeal to the Upper Tribunal, relying upon four grounds, which are summarised below;
  1. The FtT erred by failing to give reasons for dismissing the appeal with reference to paragraph 276ADE(1). No reasons were given in paragraph 20 of the decision.
  2. With reference to Article 8 the FtT made contradictory findings and gave inadequate reasons. At paragraph 34 the FtT finds that temporary separation would not be disproportionate but at paragraph 35 the FtT expresses considerable doubt that the Sponsor could meet the minimum income threshold requirement. The FtT had failed to give reasons why a separation to enable the Appellant to make an entry clearance application would be temporary in nature and proportionate.
  3. With reference to Appendix FM the FtT erred by failing to give reasons as to why it was not accepted that the couple would have very significant difficulties in continuing their family and private life in Pakistan. At paragraph 37 the FtT gave inadequate reasons for not accepting that the Sponsor's ex-husband would still have an interest in causing trouble for her in Pakistan.
  4. With reference to Article 8 the FtT accepted that the couple are in a genuine and subsisting relationship and that they have family life in this country, and the Appellant has developed a private life. The FtT failed to satisfactorily consider proportionality. The FtT failed to make findings in relation to the Sponsor's depression after losing a child.
8. Permission to appeal was granted by Judge Bird of the FtT and I set out below, in part, the grant of permission;
  3. It is arguable that the judge failed to give adequate reasons and made no specific findings under paragraph 276ADE(vi) – see paragraph 18 of the judgment.

4. The Appellant alleges that the judge failed to give adequate reasons for finding that there would be no breach of Article 8 ECHR.
5. It is arguable that the judge failed to give adequate reasons for findings made in relation to whether or not there would be a disproportionate interference to family life. An arguable error of law has been made.
9. Following the grant of permission the Respondent submitted a response pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FtT directed itself appropriately. While accepting that consideration of paragraph 276ADE(1)(vi) at paragraph 20 is brief, the FtT was entitled to find that the Appellant had not proved very significant obstacles to re-integration in Pakistan, and a different conclusion could not have been reached.
10. In respect of the temporary separation assessment, reliance was placed upon Chen [2015] UKUT 00189 (IAC) and the FtT was entitled to conclude that temporary separation would not be disproportionate and the Appellant could maintain contact with the Sponsor during the temporary separation. With reference to insurmountable obstacles it was submitted that clear reasons for finding no insurmountable obstacles are contained between paragraphs 18 and 37.
11. Directions were issued making provision for there to be a hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it should be set aside.

### **The Upper Tribunal Hearing**

12. Mr Howard relied upon the grounds contained within the application for permission to appeal. Grounds 1 and 3 were based on lack of reasoning. I was asked to find that no reasons were given in paragraphs 18-20 for concluding that there were no insurmountable obstacles to family life continuing in Pakistan, and that there would be no very significant obstacles to the Appellant's integration into Pakistan.
13. With reference to Ground 2 Mr Howard submitted that the FtT had been inconsistent in finding that there would be a temporary separation, doubting whether the financial requirements would be satisfied when an entry clearance application was made.
14. With reference to Ground 4 Mr Howard submitted that the FtT had failed to give satisfactory reasons for concluding that the Respondent's decision was proportionate.
15. Mrs Aboni relied upon the rule 24 response, contending that the FtT had given adequate reasons. Paragraph 19 should be read together with paragraphs 36 and 37. The FtT had considered together, insurmountable obstacles to family life, very significant obstacles to the Appellant's integration, and Article 8. The FtT had not erred in considering temporary

separation for the reasons given in the rule 24 response. Mrs Aboni submitted that the FtT decision should stand.

16. By way of response Mr Howard argued that paragraph 37 did not adequately consider insurmountable obstacles in relation to family life, or very significant obstacles to the Appellant's integration. Mr Howard argued that the FtT should have considered the requirements of the Immigration Rules, before assessing Article 8 outside the rules. Mr Howard accepted that findings had been made on these issues at the previous appeal hearing which took place in March 2015, although there was no reference to those findings in the FtT decision.
17. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

18. The application for leave to remain was made on 13<sup>th</sup> August 2015. It is relevant that there had been a previous appeal made by the Appellant, raising very much the same issues that were considered by the FtT in this appeal. The previous appeal was heard by Judge Matthews and the decision was promulgated on 10<sup>th</sup> March 2015. There is a very brief reference to that previous appeal, in the FtT decision at paragraph 2. In my view the FtT should have made reference to that previous appeal, and applied the principles set out in Devaseelan [2002] UKIAT 00702, explaining that the previous appeal should be the starting point, but that facts happening since that appeal must always be taken into account. If an Appellant relies on facts that are not materially different from those considered at the previous appeal, the FtT dealing with the second appeal, should regard the issues as settled by the first decision. The previous decision is not binding on the subsequent FtT, but the subsequent FtT is not hearing an appeal against the previous decision.
19. In this appeal, the FtT should have made those principles clear and erred in not doing so. I do not however find the error to be material, and I do not find that the FtT decision contains material errors such that it should be set aside. I will deal with the grounds upon which permission to appeal was granted in the order that they are set out in the application.

### **Ground 1**

20. There is a finding in paragraph 20 that the FtT is not satisfied that there would be very significant obstacles to the Appellant's integration into Pakistan, which is where he lived until he was 27. This is a consideration of paragraph 276ADE(1)(vi).
21. If paragraph 20 is read in isolation there are insufficient reasons, as all that is stated is that the Appellant lived in Pakistan until he was 27. However paragraph 20 should not be read in isolation, and while I accept that the FtT decision could have been set out more appropriately, the correct approach is to read the decision as a whole and consider it in the round.

22. With reference to paragraph 276ADE(1)(vi) it is also appropriate to consider the guidance given by the Upper Tribunal in Treebhawon [2017] UKUT 00013 (IAC) in which at paragraph 3 of the head note, it was confirmed that mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of very significant obstacles in paragraph 276ADE of the Immigration Rules.
23. It is also appropriate when considering the FtT findings on this issue, to note the findings made by the previous Tribunal as a starting point. There was specific consideration of paragraph 276ADE at paragraph 27 of the previous decision. The previous Tribunal noted that the Appellant had failed to demonstrate a lack of ties to Pakistan, commenting that this was not surprising given that he had only relatively recently arrived in the United Kingdom. He had family in Pakistan, and relatives settled in his home town, where he had spent the majority of his life. The Appellant had the required language skills to return to his previous life in Pakistan.
24. The FtT should have made reference to those findings. However at paragraphs 36 and 37 the FtT did make findings relative to whether there would be very significant obstacles to the Appellant re-integrating in Pakistan. The FtT found at paragraph 36 that although there may be a reduced standard of living, accommodation would be available with the Appellant's parents and there would be no destitution. At paragraph 37 it was found that the Sponsor's ex-husband would not have an interest in causing further trouble. If that was not the case there would be adequate protection from the police, and it would not be unreasonable or impracticable to live in another part of Pakistan. Although paragraph 37 makes specific reference to insurmountable obstacles, I find that the conclusions are relevant in considering whether the Appellant has proved very significant difficulties.
25. I find that the FtT was entitled to conclude that the Appellant had not discharged the burden of proof in relation to very significant obstacles, and overall adequate reasons have been given to support this conclusion.

## **Ground 2**

26. With reference to Article 8 outside the Immigration Rules, the starting point for the FtT should have been the previous appeal, in which this issue was considered at paragraphs 28-35, the previous Tribunal finding the Respondent's decision to be proportionate.
27. The FtT did not err in law when considering the Chikwamba principle at paragraphs 32-35. The FtT also, appropriately, considered the principles in Chen. The FtT did not err in law at paragraph 35 in finding that it was not appropriate to attempt to pre-judge the outcome of an entry clearance application. It is somewhat difficult to see what relevant further evidence on this point, was placed before the FtT, when compared with the evidence placed before the previous Tribunal. The FtT does in fact go on, at paragraph 36, to consider what would happen if the Appellant was

unsuccessful in making an entry clearance application. The FtT makes the point that while not pre-judging the application, this is not a case where an application for entry clearance is bound to succeed. I find no material error of law on this point.

### **Ground 3**

28. It is correct that at paragraph 18 the FtT does not give reasons why it is not accepted that the Appellant and Sponsor would have very significant difficulties in continuing their family and private life in Pakistan. As previously stated, the decision must be read as a whole. At paragraph 19 the FtT makes it clear, that insurmountable obstacles will be considered with issues of proportionality under Article 8 generally. In my view, it would be more appropriate to consider insurmountable obstacles first, and then if necessary go on to consider proportionality, but I do not find the approach of the FtT is materially wrong in law. Paragraphs 36 and 37 contain the reasons given by the FtT for finding that there are not insurmountable obstacles to family life continuing in Pakistan. These include the finding that accommodation would be available, the couple would not be destitute, they would not be at risk, in the alternative they could reasonably relocate to another part of Pakistan, and financial support would be available if necessary.
29. Again, this issue was considered by the previous Tribunal at paragraphs 20-21, in which it was found that no family members, including the Sponsor's ex-husband, would have an adverse interest in the couple, and at paragraphs 22-24 in which it was concluded that there would be no insurmountable obstacles to the couple relocating to Pakistan. These findings should have been the starting point for the FtT. I find no material error of law in the FtT conclusion that the Appellant has not proved that there are insurmountable obstacles to family life continuing in Pakistan.

### **Ground 4**

30. I find that this ground amounts to a disagreement rather than an error of law. It is contended that proportionality has not been satisfactorily addressed. Again, this issue was considered by the previous Tribunal, who found that the decision was proportionate, and this should have been the starting point.
31. With reference to the Sponsor's depression after losing a child, I note that there was no medical evidence in relation to this before the FtT. There has been a further bundle prepared for the Upper Tribunal in which there is medical evidence, but the only evidence in relation to depression is a handwritten note from Dudley and Walsall NHS dated 4<sup>th</sup> August 2016 which makes a reference to the Sponsor visiting her GP to discuss obtaining an antidepressant. Depression was not mentioned in the witness statements of the Appellant or Sponsor which were before the FtT,

and appears only to have arisen as a result of cross-examination. I do not find that this was put forward by the Appellant as a material issue, and in any event, there was no medical evidence to confirm details of any depression. The FtT did not therefore materially err in law in failing to specifically refer to the Sponsor's depression.

32. For the reasons given above, I conclude that no material error of law is disclosed within the FtT decision such that the decision should be set aside.

### **Notice of Decision**

The making of the decision of the FtT did not involve the making of a material error of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

### **Anonymity**

No anonymity direction was made by the FtT. There has been no request for anonymity made to the Upper Tribunal, and no anonymity order is made.

Signed

Date

8<sup>th</sup> June 2017

Deputy Upper Tribunal Judge M A Hall

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

The appeal is dismissed. There is no fee award.

Signed

Date

8<sup>th</sup> June 2017

Deputy Upper Tribunal Judge M A Hall

