



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

Appeal Number: HU/03726/2015

THE IMMIGRATION ACTS

Heard at Bradford

On 24 April 2018

**Decision & Reasons
Promulgated
On 8 May 2018**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**SYED MUHAMMAD ISHAQ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - ABU DHABI

Respondent

Representation:

For the Appellant: Mrs Sheeba Nisar (sponsor/wife)

For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Syed Muhammad Ishaq, was born on 3 April 1978 and is a male citizen of Pakistan. The appellant had applied to the Entry Clearance Officer (ECO) Abu Dhabi for entry clearance for settlement as the spouse of Mrs Sheeba Nisar (the sponsor) who is a British citizen. By a decision dated 7 August 2015, the ECO refused the application. The appellant appealed to the First-tier Tribunal (Judge Eban) which, in a decision promulgated on 4 January 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I find that this appeal should be allowed. It is common ground between the parties that the appellant and sponsor could not meet the income requirements of HC 395. The judge, in a thorough decision, considered that, although the income threshold could not be crossed at the date of the application, it was likely that, by the time the case came before him, the appellant was able to meet the necessary requirements. Notwithstanding that fact, he considered it appropriate for the appellant to make a further application. At [15], the judge considered Section 55 of the Borders, Citizenship and Immigration Act 2009 and the best interests of the two children of the sponsor and appellant. The children had lived all their lives in the United Kingdom. They are still quite young, having been born in January 2011 and December 2012 respectively. They are separated from their father, the appellant, and see him only when they visit Pakistan. The judge concluded [16] that it was in the best interests of the children to stay living with their mother in whatever country she happened to be living. At [18], the judge considered whether it would be a disproportionate interference with the family life of the appellant and children and sponsor to refuse entry clearance on these facts. He anticipated there would be no lengthy separation since any application would be dealt with “promptly and allowed.” The judge also noted [19] that the appellant is an educated professional man (a doctor).
3. I do not for one moment suggest that the judge erred in law by failing to anticipate that, as has transpired, a further application made by the appellant for entry clearance has been refused. I was told at the hearing that the refusal was based on a failure to supply the necessary documents. However, the appellant claims to have sent in all the necessary documents which appear to have been mislaid by the ECO. There is the prospect of a further very lengthy appeal process and, very significantly, an extension of the separation of the appellant from his family, in particular his children.
4. None of that is the responsibility of the First-tier Tribunal Judge. However, I do consider that this is a case where the judge should, given the particular facts, have allowed the appeal on Article 8 grounds. The sponsor and the children are British citizens and the children have lived all their lives in this country. Whilst there are no impossible obstacles preventing family life taking place in Pakistan, it was not open to the judge to conclude that family life could take place in any jurisdiction other than the United Kingdom. Given that factor and considering also that, by the time the appeal reached the First-tier Tribunal, it was clear that the appellant was able to meet all the requirements of HC 395, I consider that the judge should have reached a different outcome. The best interests of the children do not “trump” all other considerations but, whilst I agree with the judge that a primary interest of the children is to remain with their mother, another very important interest can only be met by terminating the lengthy separation of these children from their natural father. On the very particular circumstances before the Tribunal, I find that the judge erred in law and I set aside his decision. In the light of my observations set

out above, I have remade the decision allowing the appeal on Article 8 ECHR grounds.

Notice of Decision

5. The decision of the First-tier Tribunal which was promulgated on 4 January 2017 is set aside. I have remade the decision. The appeal is allowed on Article 8 ECHR grounds.
6. No anonymity direction is made.

Signed

Date 28 APRIL 2018

Upper Tribunal Judge Lane