



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/26525/2016

THE IMMIGRATION ACTS

Heard at Field House  
On 5 February 2018

Decision & Reasons Promulgated  
On 8 June 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

ENTRY CLEARANCE OFFICER

Appellant

and

FARYAL FARHAN  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr Tufan, Senior Home Office Presenting Officer  
For the Respondent: Mr Kannangara, instructed by Malik Law Chambers

DECISION AND REASONS

1. The appellant, Faryal Farhan, was born on 13 November 1985 and is a female citizen of Pakistan. She appealed to the First-tier Tribunal (Judge Colvin) against a decision of the respondent dated 16 November 2016 to refuse entry clearance as a partner under Appendix FM of HC 395 (as amended). The First-tier Tribunal, in a decision promulgated on 19 October 2017, allowed the appeal on Article 8 ECHR grounds. The Secretary of State now appeals, with permission, to the Upper Tribunal.
2. The sponsor and partner of the appellant is Farhan Yunus Sadiq (hereafter the sponsor) the sponsor is a British citizen who was born in Pakistan. He married the

appellant in April 2012. The sponsor works as a hairdresser. Following a careful analysis of the documentary evidence, the judge concluded that the ECO had been right to refuse the appellant's application under the Immigration Rules on the basis that the sponsor does not have an annual gross income in excess of £18,600. At the present time, the appellant is living in Pakistan with the child of the marriage, who was born in October 2013 and who is a British citizen. The judge noted [4] it is not disputed that the appellant and sponsor have a genuine and subsisting relationship.

3. Having found that the appellant could not qualify for entry clearance under the Immigration Rules, the judge went on to consider Article 8 ECHR [26-28]. The judge noted that, although the sponsor could not meet the requirements of Appendix FM at the time of the application, it was now "highly unlikely" that the family if living together in the United Kingdom will need to have recourse to public funds. The judge concluded her analysis as follows:

At the same time there was a British citizen child of the family living in Pakistan who remains separated from her father whilst this settlement application is processed. Although the sponsor visits Pakistan and sends money for the maintenance of the family, it is in the best interests of the child that she lives with both her parents and, as she is now coming up to primary school age, that she has the opportunity of starting her education in the UK.

On the evidence before me I am satisfied there are sufficient exceptional circumstances to reach the view on a balance of probabilities that the respondent's refusal decision is disproportionate when taking into account of the public interest considerations (*sic*). Accordingly, I allow the appeal.

4. The discussion and analysis of "exceptional circumstances" is, by any standards, brief. The judge considered that the family would not need to have recourse to public funds (notwithstanding the appellant's inability to satisfy the requirements of Appendix FM) and that, whilst the appellant waits for a further application to be made, she has been deprived of the opportunity of living with both her parents and starting school in the United Kingdom. With respect to the judge, the very same could be said of any child living abroad and separated from a British parent. It is very difficult to identify exceptional circumstances in the evidence before the judge. Further, Mr Tufan relied upon *SS (Congo)* [2015] EWCA Civ 387, in particular at [82]:

In relation to this case, Mr Payne submitted that it is clear on the evidence available when LTE was refused by the Entry Clearance Officer that this was a lawful decision which did not violate Article 8 and that accordingly, if the appeal is allowed, there is no need for the case to be remitted to the Upper Tribunal for further consideration. We agree. This is a case in which the sponsor, a British citizen, wished to be joined by his foreign national wife to take up family life in the United Kingdom, rather than continuing it in her home country. It appears that the family life was commenced in circumstances where it was known to be precarious, if the couple wished it to be carried on in the United Kingdom. Moreover, there was nothing to prevent the husband from going to Pakistan to continue their family life there. Article 8 does not give rise to an obligation on the state to accommodate a preference to pursue family life in the United Kingdom rather than overseas. At the time of the refusal of LTE, the minimum income requirements in the Rules in respect of the sponsor were not

satisfied. There were no compelling circumstances to require the grant of LTE outside the Rules. If the sponsor expected to be able to satisfy the minimum income and evidence requirements in the near future, the appropriate course was to wait and submit a properly supported application for LTE when the requirements in the Rules could be satisfied. There was nothing disproportionate in the Secretary of State applying the Rules according to their terms in this case.

Whilst I acknowledge that there was no British child in the consolidated appeal of SS (Congo) which the court considered at [82], the judge in the instant appeal has failed, in my opinion, to take account (i) of the ability of the appellant to make a further application for entry clearance ("the appropriate cause"); (ii) that there was no consideration at all in his Article 8 analysis of the possibility of family life being pursued in Pakistan; the Court of Appeal at [80] noted that excessive weight had been given by the Tribunal to the fact the sponsor was a British national but they had not given "proper consideration of the possibility of continuing family life in Pakistan"; (iii) family life was started and a child conceived at a time when the couple's ability to carry on that family life in the United Kingdom was far from certain, particularly given the sponsor's inadequate income; (iv) this is an entry clearance case (as the grounds point out) in which the *status quo* has not been affected at all by the ECO's decision. With those considerations in mind, I set aside the First-tier Tribunal's decision and remake the decision, dismissing the appellant's appeal against the decision of the Entry Clearance Officer.

**Notice of Decision**

The appeal is allowed. The decision of the First-tier Tribunal is set aside. I remake the decision dismissing the appellant's appeal against the decision of the Entry Clearance Officer dated 6 November 2016.

No anonymity direction is made.

Signed

Date 20 APRIL 2018

Upper Tribunal Judge Lane

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

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 20 APRIL 2018

Upper Tribunal Judge Lane