



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29622/2015

THE IMMIGRATION ACTS

Heard at Field House
On 7th June 2018

Decision & Reasons Promulgated
On 14th June 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

ADEEL AHMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Turnbull (instructed by Chauhan Solicitors)
For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant in relation to a Decision of Judge Daldry of the First-tier Tribunal. He heard the case at Taylor House on 18th August 2017 and in a decision and reasons promulgated on 6th September 2017 dismissed the appeal.
2. The Appellant had sought leave to remain on the basis of his family and private life in the UK. He is a citizen of Pakistan who originally came to the UK in 2011. He came to the UK as a student and had that leave extended until April 2015. He made

the application, the subject of this appeal in November 2014. It was rejected by the Secretary of State, principally on suitability grounds, the Secretary of State alleging that he had cheated in a TOEIC English language test on 22nd May 2013.

3. The judge heard evidence from the Appellant in relation to that matter and found in the Appellant's favour that he had not cheated.
4. The judge then went on to consider the human rights claim in relation to the fact that the Appellant was married to a British citizen and they had two children together. The couple met in 2013. They entered into an Islamic marriage in June 2013 and they were married in a civil ceremony at a registry office on 14th October 2013. After that their two children were born.
5. In assessing the human rights claim the judge considered Ex.1 of Appendix FM at paragraph 26. However he did so only in relation to the Appellant's relationship with his wife and considered whether there were insurmountable obstacles to their family life continuing in Pakistan. The Judge did not consider at all the other part of Ex.1 in relation to having a genuine and subsisting parental relationship with British children. Ex.1 provides that an Appellant will succeed unless it is reasonable to expect the children to leave the UK.
6. The Secretary of State's own guidance is that it is not reasonable to expect British children to leave the UK. Lord Justice Elias, in the case of MA (Pakistan) [2016] EWCA Civ 705, makes the point, in relation to children who have been in the UK for seven years, that powerful reasons are needed to justify removing them. Clearly, even more powerful reasons are needed if the children are British. In this case the Appellant has a British wife and two British children. The judge made adverse comments about the fact of their getting married, which are unjustified. The Appellant had fifteen months of leave left at the time they married. The judge gave no consideration to the fact that these children are British. It is clearly in a British child's best interests to remain in the UK.
7. Mr Walker accepted that the Decision and Reasons was tainted by a material error of law in failing to give proper consideration to the British children and I therefore set aside the determination insofar as the human rights elements are concerned. The finding in relation to the TOEIC test I preserve.

Notice of Decision

8. I redetermine the human rights appeal and on the basis of what I have already said about the best interests of British children and the reasonableness of expecting them to leave the UK I allow the appeal. They succeed under Ex.1 of Appendix FM and as Appendix FM is the part of the Immigration Rules that the Secretary of State says is Article 8 compliant, it follows that to refuse a person leave who meets their requirements is disproportionate.
9. I allow the Human Rights appeal

10. There has been no application and I see no necessity for an anonymity order.

Signed

Date 13th June 2018

Upper Tribunal Judge Martin

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because the Secretary of State's initial evidential burden was satisfied in relation to the TOEIC test and therefore I make no fee award.

Signed

Date 13th June 2018

Upper Tribunal Judge Martin