



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/15855/2018

**THE IMMIGRATION ACTS**

Heard at Manchester CJC  
On March 4, 2019

Decision & Reasons Promulgated  
On March 7, 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

CHOUDHRY [A]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss Faryl, Counsel, instructed by M & K Solicitors  
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a Pakistani national, claimed to have entered the United Kingdom on July 18, 2003 as a visitor. He did not leave the United Kingdom when his leave expired.

2. The appellant made several applications to regularise his immigration status as follows:
  - (a) He submitted an application for indefinite leave to remain in the United Kingdom on July 22, 2009 but this was rejected on August 4, 2009 as the appellant failed to pay the appropriate fee.
  - (b) On July 27, 2009 he submitted a certificate of approval for marriage which was issued on March 23, 2010.
  - (c) On August 7, 2009 he submitted an application for indefinite leave to remain in the United Kingdom, but this was refused on June 14, 2010 without a right of appeal.
  - (d) On December 5, 2010 he submitted an application for leave to remain outside of the Immigration Rules, but this was refused on January 9, 2011 without a right of appeal. A reconsideration of this decision, on April 8, 2011, upheld the original decision. The appellant appealed that decision and the First-tier Tribunal dismissed his appeal and permission to appeal was refused by the Upper Tribunal.
  - (e) On May 10, 2012 and June 21, 2012, the appellant applied to remain on the grounds he was in a relationship with his partner but these were rejected and refused respectively on June 12, 2012 and February 15, 2013. The appellant judicially reviewed the latter decision, but this was refused.
  - (f) On January 8, 2015 the appellant invited the respondent to consider his situation under paragraph 353 HC 395 but this was rejected on March 18, 2016.
  - (g) On March 16, 2016 the appellant submitted a Family and Private life application which was refused and certified on December 7, 2016. On January 19, 2017 the appellant invited the respondent to consider his circumstances under paragraph 353 HC 395, but this was refused and a subsequent judicial review application was refused September 28, 2017.
3. The appellant lodged his current application under the Immigration Rules on November 2, 2017 but this was refused by the respondent on July 12, 2018. The appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on July 26, 2018.
4. His appeal was heard by Judge of the First-tier Tribunal McCall on November 8, 2018 and in a decision promulgated on November 28, 2018 he dismissed the appellant's appeal.
5. Permission to appeal was sought on December 12, 2018 and on December 20, 2018 Judge of the First-tier Tribunal Hodgkinson granted permission to appeal finding it arguable the Judge had erred in his assessment of the appellant's partner's medical

evidence and his conclusion that she would be able to either accompany the appellant to Pakistan or remain alone in the United Kingdom.

6. No anonymity decision is made.

### **SUBMISSIONS**

7. Ms Faryl adopted the grounds of appeal and submitted that the Judge had made an error in law by failing to take into account all of the written and oral evidence of the appellant's wife's medical condition when deciding whether there were insurmountable obstacles to her either accompanying the appellant to Pakistan or to remaining in the United Kingdom without the appellant.
8. She argued that the Judge had placed too much weight on one letter from a dietician which made no reference to the appellant's wife's mental health. The appellant had stated in his oral evidence that he did not leave his wife alone and that he cooked for her, gave her medication and took her out for a walk or to the shops. Whilst he had stated in his oral evidence that he intended to work this was an aspiration for the future and he would only do so if there were others to provide the necessary care for his wife. The fact they had been seeking an assessment for fertility treatment was neither unusual nor unfanciful and should not have been used by the Judge to make an adverse finding against the appellant. She submitted the Judge's assessment was inadequate and there was a material error when he found that her condition had improved.
9. Mr McVeety noted that the Judge had accepted in paragraph 26 of his decision that the appellant's wife had a history of anxiety, panic attacks and depression. It was argued the appellant should not be removed because he was providing 24/7 care for his wife, but this contradicted his oral evidence that he wished to go to work. The Judge's findings on fertility were also open to him. In order to succeed, the appellant had to demonstrate there were insurmountable obstacles in accordance with the dictum of R (on the application of Agyarko) (Appellant) v Secretary of State for the Home Department (Respondent) [2017] UKSC 11. Whilst the Judge accepted there were health problems there had been no evidence adduced that she would be unable to access treatment in Pakistan and the fact she did not speak Urdu was not an insurmountable obstacle.
10. I reserved my decision.

### **FINDINGS**

11. It is clear from reading the Judge's decision that account was taken of the appellant's wife's mental health issues because at paragraph 6 of the decision the Judge treated her as a vulnerable person.
12. The appellant's immigration history was correctly recorded and it was noted that having entered the United Kingdom in July 2003 as a tourist he did not leave and made no application to regularise his stay until July 22, 2009 when he made an

application for indefinite leave to remain. That application along with six other applications were subsequently either rejected or refused by the respondent and three of those applications were considered by either the Tribunal or the Administrative Court.

13. The current application that was considered by the Judge concerned the relationship between the appellant and his wife which appeared to commence towards the end of 2010. The respondent accepted, as did the Judge, that they were in a genuine and subsisting relationship but in order to meet Section EX.1 of Appendix FM of the Immigration Rules the Judge had to be satisfied there were insurmountable obstacles to his removal. Those insurmountable obstacles were said to be the appellant's wife's medical condition.
14. Ms Faryl submitted that the Judge did not take into account all the evidence and Judge of the First-tier Tribunal Hodgkinson found it arguable the Judge McCall may have fallen into error in his assessment.
15. The Judge accepted at paragraph 22 that the appellant helped and supported his wife from the moment they met and saved her from a life of illegal drugtaking. Whilst it is submitted the Judge placed no weight on the medical evidence, I note that he referred to documents that existed in both the appellant's and respondent's bundle which addressed her medical condition. The Judge noted that most of the medical evidence related to her Personal Independence Payment and Employment Support Allowance claims but at paragraph 24 he noted that a more recent letter from Lancashire NHS Trust referred to her ability to take half-hour walks around the park and to taking nutritional advice in order to address weight issues. It is this finding at paragraph 24 that Ms Faryl submitted amounted to an error in law.
16. However, contrary to Miss Faryl's submission the Judge did not simply base his decision on that letter because he considered the oral evidence provided by the appellant at the hearing.
17. The Judge set out, in his decision, an exchange between the appellant and Ms Faryl in which the appellant stated that in addition to looking after his wife he intended to work. The Judge found that this statement contradicted the earlier claim that his wife required 24-hour support and care.
18. The Personal Independence Payment award from July 30, 2016, which was payable until July 3, 2020, highlighted the fact that the appellant was entitled to an enhanced payment for daily living and a standard payment for mobility although the points awarded for "preparing food, eating and drinking, managing treatments, washing and bathing, managing toilet needs and dressing and undressing" were all at the bottom end of the scale and do not support an argument that she required care 24/7.
19. The Judge considered further medical evidence contained within the bundles about her mental health and ultimately concluded that she relied on prescribed medication and voluntary attendance at support groups and did not pose a risk of harm to herself.

20. The Judge did not have any evidence regarding medical resources in Pakistan and the appellant had to show his wife would not be able to access the appropriate medical care in Pakistan. Ms Faryl did not argue that such facilities or medication were unavailable.
21. The Judge noted that the appellant had family in Pakistan and had previously been in business as a car dealer. The Judge considered numerous letters provided by family members and the caseworker and attached weight to those documents. At paragraph 32 the Judge considered the issue of insurmountable obstacles and at paragraph 33 concluded that on the evidence before him there were no such obstacles.
22. Ms Faryl's submission was that the Judge decided the case on a single letter but a full reading of the Judge's decision demonstrated that this was not the case. The Judge did not dismiss the appellant's appeal based on a dietician's letter but found there were no insurmountable obstacles having considered family evidence, medical evidence and the oral evidence provided by the witnesses. The finding therefore made at paragraph 34 of the decision was open to the Judge.
23. The grounds of appeal did not challenge the assessment carried out under article 8 ECHR but for the sake of completeness I find that the Judge's findings set out in paragraphs 35-38 of the decision were findings open to him.
24. There is no material error in law.

### **Notice of Decision**

There is no error in law. I uphold the original decision

Signed

Date 05/03/2019

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Deputy Upper Tribunal Judge Alis

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

As I have dismissed the appeal I make no fee award.

Signed

Date 05/03/2019

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Deputy Upper Tribunal Judge Alis