



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/24392/2016
HU/24396/2016

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre
On 14th March 2019

Decision & Reasons Promulgated
On 12th April 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS FOUZIA KHAN
MR MUHAMMAD UMAIR
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Makol
For the Respondent: Mr C Howells

DECISION AND REASONS

Introduction

1. The Appellants, born on 23rd March 1986 and 25th June 1987 respectively, are both citizens of Pakistan and are married. They made application for leave to remain in the United Kingdom based on family and private life. That application was refused by the Respondent on 12th October 2016. The Appellants appealed that decision and their appeals were heard by Judge of the First-tier Tribunal Trevaskis sitting at Newport on 2nd October 2017. The judge allowed their appeal outside of the Immigration Rules on human rights grounds. The Respondent made application to appeal that decision on 11th October 2017. Permission to appeal was granted by First-

tier Tribunal Judge Maller on 19th March 2018. He found it was arguable that the judge had erred in finding that there would be very significant obstacles to their integration in Pakistan thus affecting his findings under both the Rules and under Article 8 outside of the Rules.

2. Directions were issued for the Upper Tribunal first to consider whether or not an error of law had been made in this case. That hearing took place on 15th August 2018 before Upper Tribunal Judge Rimington. The judge found that the factors outlined by the judge as potentially constituting a very significant obstacle to their reintegration in Pakistan was a material error of law and set aside the decision with directions that there should be a resumed hearing in the Upper Tribunal.
3. The matter has now come before me in accordance with those findings made by Upper Tribunal Judge Rimington.

The Proceedings - Introduction

4. As the Appellants were present I firstly outlined to them the nature of the proceedings and the way they would be conducted. I next checked the documents available to me in this case. Those documents consist of the original documents before the First-tier Tribunal.

The Proceedings - Evidence

5. The first Appellant, Mrs Khan was called to give evidence. She provided her name, date of birth and address on file. She confirmed that her witness statement was true and correct and adopted that as her examination-in-chief.
6. In cross-examination she said that she had her parents and siblings in Pakistan and she had nine siblings. She was in contact with her parents. Her husband has his mother in Pakistan and he was in contact with her. He also had brothers and sisters and was in contact with them. She said that her husband's mother lived with his siblings and his father had died. She confirmed that she had a BSc in computer science from Pakistan and an MSc in mobile computing from the UK. She said that her husband had similar BSc qualifications from Pakistan, and both worked in the IT/software industry in the UK.
7. She said that when they came to the UK in 2014 as students they intended to return to Pakistan but that changed when they got a job offer in the UK. She was only allowed to work twenty hours per week. She said that the Genie Lab had applied for a Tier 2 visa for her. She said that she had gone earlier to a firm of solicitors and nothing had happened. In 2016 she said that she had informed the Home Office that they intended to leave voluntarily for Pakistan. However, she said they had debts in this country because they cannot work and she believed those debts were now more than £8,000 and approaching £11,000. She provided a breakdown of where she believed those debts resided and her husband confirmed the same. She said that their daughter was 17 months of age and in good health.

8. I next heard from the second Appellant, Mr Umair who provided his name. He said that he had read his wife's witness statement and accepted that and adopted it as his own evidence-in-chief. In terms of making an application from Pakistan to come to the UK as a Tier 2 Migrant he said that their immigration history is such that because of this current problem he thought it would be difficult for them to be readmitted. He said further the additional costs of living in Pakistan without employment and applying for a visa meant that they could not afford such monies. He said that his wife was also now currently thirteen weeks pregnant.
9. In cross-examination he confirmed that he originally intended to return to Pakistan. He accepted that they could get a job in Pakistan within three months but the maximum income he could get would be about £800 per month and the rent of a property would take up about a third of that income. He said that he had been working in Wales for two years when he was dependent on his wife's student visa and had earned £25,000 per annum. He had then relocated to Cardiff with a second company where he had earned £22,000.
10. In closing submissions the Respondent relied upon the refusal letter and it was submitted that there were no difficulties in return under paragraph 276ADE(vi) of the Rules or reasons to remain outside of the Rules under Article 8. It was noted that the application in August 2016 was an application outside of the Rules under Article 8 rather than an application for a Tier 2 visa.
11. In closing submissions on behalf of the Appellants it was submitted that they were both credible. I was referred to their immigration history and the negligence and criminal action of their former solicitor documented within the bundle as being the basis for why a wrong application was made and their difficulties began. It was further said that an Entry Clearance Officer would look at their immigration history and potentially refuse any application to come to the UK on a Tier 2 visa or any other visa.
12. At the conclusion of the hearing I reserved my decision to consider the documents and evidence submitted. I now provide that decision with my reasons.

Decision and Reasons

13. In this case the burden of proof lies on the Appellants and the standard of proof required for both immigration and human rights issues is a balance of probabilities.
14. I have carefully examined all of the evidence in this case. I do not find that credibility is in issue in this case and I accept the evidence provided by the Appellants. In reality there is little dispute on the facts in this case.
15. The Appellants present with an unusual case that understandably would lead to a sympathetic view being taken of their current position. The Appellants are both highly qualified individuals and came to the UK as students. They formed an intent to remain in the UK as it provided potentially greater income and opportunity than similar work in their home country. It is easy to envisage that in normal

circumstances they may well have progressed from holding student visas to potentially successfully obtaining other visas giving them status and ability to obtain skilled employment at a reasonable rate of pay in the UK. Regrettably they approached for advice and assistance a disreputable firm of solicitors who did not provide proper advice and indeed appear to have simply taken their money and failed to make any proper application. The conduct and fate of these solicitors within the criminal courts is documented within the paper work and their culpability and the fact that the Appellants were victims of their actions is beyond doubt. That set of circumstances I accept and place to one side for the moment.

16. The Appellants' application is to remain on the basis of their family and private life. In accordance with such appeals I have firstly considered whether the Appellants come within the terms of the Immigration Rules, as if they do, that is powerful evidence to indicate removal would be disproportionate.
17. In terms of the Immigration Rules the only relevant requirement they may meet is under paragraph 276ADE(vi) in that based upon their private life they would face very significant obstacles in terms of reintegration into life in Pakistan. The case of **Treebhawon [2017] UKUT 00013** has been referred to me as providing guidance on what falls short of being very significant hurdles under paragraph 276ADE.
18. The reality is that neither Appellant would face any real obstacles on return to Pakistan. It is difficult to fashion a cogent argument to the contrary. Both Appellants have spent most of their lives in Pakistan and were educated to degree level in that country. They are both in good health, and although there is reference to diabetes on the part of Mrs Khan, that is not so far as I can see put forward as being at a debilitating stage, untreatable nor suggesting that any treatment necessary is not available in Pakistan. They both have large close families within their home country with whom they are in contact. Whilst long term it may be difficult for any family member individually to provide housing for them I find it most unlikely that short term or in extremis they would not find shelter with a family member. It is accepted that they would obtain employment within a short time and Mr Umair calculated he would earn about £800 monthly. He was concerned that was insufficient to repay or reduce his UK debt and concerned he may spend about a third of that monthly income on rent. That percentage expended upon rent is not specific to Pakistan and there may be many people in the UK, particularly in places such as London, who are familiar with paying such a percentage of their income on rent. I fail to see the argument concerning the UK debt. I accept that there is a debt. Firstly, it presumes that that UK debt will necessarily follow the Appellants to Pakistan. Secondly, at least in Pakistan they would be earning monies potentially preventing any such debt increasing whereas in the UK they are unable to work. As I understand it a tranche of that current debt was as a result of the direct or indirect culpability of their solicitors. However, more than half of that current debt has been accumulated by the Appellants continuing to live in the UK with all the living expenses involved and at the same time being unable to work. Remaining in the UK in limbo and without lawful authority and the ability to work seems the worst option to take in terms of debt clearance.

19. They have a very young child whose best interests are totally defined as being with the Appellants wherever they may be and the recent case of **KO [2018]** is appropriate in those circumstances. The fact that Mrs Khan is pregnant may suggest that being with her extended family in her home country with settled status would be rather better for her wellbeing in the next months rather than the current uncertain and undoubted stressful state of affairs.
20. There is no significant obstacle to the Appellants reintegrating into Pakistan completely and in my view with ease.
21. Finding they do not come within the terms of the Immigration Rules I have looked at circumstances generally to see whether they demonstrate that their situation should be considered outside of the Rules applying the concept of proportionality within the final stage test of **Razgar**.
22. Firstly I find their UK debt, a feature upon which they relied heavily, is not such a circumstance. I acknowledge the first tranche of that debt is linked to the poor legal advice they received and therefore deal with that aspect in the context of that advice. However, the greater part of that debt as I have indicated above has increased over a period of time as a direct result of them remaining in the UK without status and the ability to work and earn money.
23. They are undoubtedly victims of unscrupulous and unpleasant individuals who were convicted by the Crown Court. The circumstances of that history does provide an unusual, even exceptional angle to their case that justifies looking at matters outside of the Rules. As I have indicated above I have much sympathy with the Appellants' plight. It is also the case that they may well be potentially a valuable asset to the UK in terms of their skills and willingness to work. Certainly on that basis alone they stand head and shoulders above many that are seen in these courts.
24. However, when examining Article 8 outside of the Rules and by necessity Section 117B of the 2002 Act, statute reminds us that adherence to immigration policy is in the public interest and their failure to meet the Immigration Rules is a feature. Their command of English, ability to work and integration means that they do not attract any adverse factors under Section 117B(2) and (3). I place far less reliance upon (4) and (5) given the unusual history in this case but I do remind myself that before their unfortunate meeting with previous solicitors they were only in the UK on temporary visas and therefore their status has always been precarious.
25. The question is whether removal is disproportionate in respect of their family and private life. In terms of S55 Borders Act I refer to [19] above. I do not find it interferes with their family life as they would leave together, have no family in the UK and all their family is within their home country. In terms of private life it is disruption at an acceptable level that is the question rather than a sympathetic acknowledgment of bad luck or a generalised assessment of their economic worth to the UK. The latter in my view, if it does anything, perhaps lowers the bar of public interest in removal but does not remove the bar totally when looking at all matters in the round.

26. I find when looking at all features in this case, placing as much weight as I can upon the unusual circumstances surrounding their former solicitors, that it simply cannot be found that removal would be disproportionate in this case. The Appellants clearly wish to gain employment in the UK. A removal to Pakistan does not preclude that occurring in the future although I can understand their concern as to how they would be viewed by an Entry Clearance Officer. There is clearly mitigation to their circumstances. They have produced and are capable of producing cogent documentary evidence relating to those unusual circumstances. They would no doubt be able to evidence their potential value to the UK and their abilities to obtain employment as skilled migrants. I would certainly hope that any proper application they made from Pakistan to come to the UK as skilled migrants would be considered fairly and sympathetically because if they meet the necessary criteria it would seem somewhat unjust to hold their particular circumstances against them in terms of the position of their recent immigration status. However, the test that I have to apply at this stage, i.e. the question of proportionality under Article 8 outside of the Rules, seems to me capable of only one answer as I have indicated above that such removal would not be disproportionate in all the circumstances of this case.

Notice of Decision

27. I dismiss this appeal.

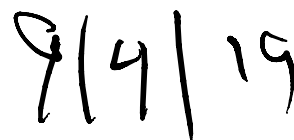
No anonymity direction is made.

Signed



Deputy Upper Tribunal Judge Lever

Date



TO THE RESPONDENT
FEE AWARD

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

Signed



Deputy Upper Tribunal Judge Lever

Date

