



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

Appeal Number: HU/17601/2019

**THE IMMIGRATION ACTS**

**Heard at Bradford via Skype  
On 20 August 2020**

**Decision & Reasons Promulgated  
On 06 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**DANIYAL SHAHID QURESHI  
(Anonymity order not made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Hussain instructed by Justmount Solicitors

For the Respondent: Mrs Aboni Senior Home Office Presenting Officer

**ERROR OF LAW FINDING AND REASONS**

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Borsada ('the Judge') promulgated on 8 January 2020 in which he dismissed the appellant's appeal on human rights grounds.
2. Permission to appeal was granted by another judge of the First-tier Tribunal on 15 April 2020.

## **Background**

3. The appellant is a citizen of Pakistan born on 4 January 1987 who appealed the decision of 10 October 2019 refusing him leave to remain in the United Kingdom on family and private life grounds pursuant to the Immigration Rules ('the Rules') and article 8 ECHR.
4. Having set out in the decision a summary of the respondent's reasons why the application was refused, and the appellants reasons why the appeal should be allowed, the Judge sets out his findings of fact from [6] of the decision under challenge.
5. The Judge accepts on the basis of the oral and written evidence that the appellant and his partner ('the partner'), a UK citizen, are in a long term relationship that would meet the requirements of the Rules with regards to its subsisting nature. The Judge also noted the partner's medical history and was satisfied that the evidence about the chronic nature of her mental and physical health was accurate in the sense that she is clearly a vulnerable individual who requires fairly frequent monitoring of her health; in particular in consequence of her bariatric surgery but also with respect to her poor mental health. The Judge refers to the appellant being a great source of emotional support and without him in his partner's life her well-being would be jeopardised [7].
6. The Judge notes at [10] that it was not disputed that the matter came down to the exceptions provided within the Rules. The Judge specifically confirms that he has taken into account the 'insurmountable obstacles test' which the Judge did not find on the evidence had been met, which was found to warrant the respondent rejecting the application under the Rules. The Judges reasons, in addition to accepting the arguments put forward by the respondent set out at [4] of the decision under challenge, are set out at [11 - 14] of the decision under challenge in the following terms:

"11 Whilst I note and accept that the difficulties there would be for the appellants partner in living in Pakistan but I am not satisfied that this evidence of insurmountable obstacles and the test on the evidence provided concerning the difficulties for the appellants partner is not met. The evidence with regard to health services does not indicate that provision in Pakistan is more problematic than in the UK but there is provision and so therefore no clear evidence the appellant and his partner would not have access to it on their return. I certainly do not find that the couple are likely to be destitute in Pakistan such that they would come into the category of being poor or being forced to live in a rural area with limited/no access to health provision. There is no clear evidence that the healthcare of either the appellant or his partner is at such a critical level that a change to their living circumstances would result in a significant deterioration in their well being particularly in circumstances in which health care provision is available in Pakistan even if at a lower level.

12. I note again that whilst the appellant's partner has never lived outside the UK and is not familiar with the customs, language and traditions of Pakistan there is no clear evidence that she would not be able to adapt given in particular the help and support she would undoubtedly receive from the appellant. Again there is no clear evidence that being in an interfaith marriage would be such as to cause the couple to become ostracised/isolated and this submission therefore amounts to mere unfounded speculation. I do accept the importance of the appellant's relationship with his partner in maintaining their joint well being but the decision of the respondent is not one that would result in their being separated and family life between a couple would in my view be entirely viable in Pakistan.
  13. With regards to how the couple would be able to maintain themselves in Pakistan: the appellant is not without skills and he has clearly been educated to a fairly high level such that it is not my view that he has demonstrated that he would not have the means to maintain himself and his partner on returned to Pakistan albeit that I do accept that it would be more difficult for the appellant's partner to find work given the difficulties of language and culture. There is no clear evidence that the couple would be destitute or without resources if they went to Pakistan together.
  14. As to the appellants partners family life outside her relationship with the appellant: I note that the contact she has with her mother is mostly indirect and this could continue after she left the country with visits from time to time in the UK admittedly these would be less frequent than twice a month. As to her children, there is effectively no contact with them at the current time and in the sense the decision of the respondent does not affect this status quo."
7. The reference to the appellants partners children ties in with the Judge noting the partners past experiences of having been involved in a very violent previous relationship in which she was the victim of domestic violence, when she was stamped on by her partner who was convicted and sentenced to 13 years imprisonment as a result, after which the partners two children were taken into care. Her son has been formally adopted and her daughter is cared for by another relative. In that respect, it is noted in the evidence there is a letter from her previous family law solicitor indicating the partners failure to attend a hearing in the Family Courts in relation to an application she made concerning her daughter, which led to the solicitor stating the partners contract remains limited to indirect contact to the child with there being little evidence of foreseeable change in the future.
  8. Whilst Mr Hussain mentioned the partners past difficulties it was not made out her former partner was a national of Pakistan, a person who could create any difficulties for her if he return to Pakistan, or that this was a country in which there was a real risk the violence she was subjected to in the past will be inflicted upon her again.

9. Mr Hussain also referred to an unfortunate development in relation to the partners pregnancy which she tragically lost, although she is now pregnant again. This is a new matter that was not before the Judge and if the birth of a British national child warrants a further application advice can be sought upon the same.
10. It was not disputed the issue under the Rules related to whether there were insurmountable obstacles to family life continuing in Pakistan. It was submitted in the pleadings that the appellants case was that medical care would not be adequate, would cost the partner significantly in circumstances where she or the appellant would not be working immediately upon return to Pakistan and the appellant not have access to immediate income as they would have no family support in Pakistan, and that there had been no proper consideration of matters by the Judge such as the availability or access to medical care in Pakistan. The grounds also assert the Judge failed to make any reference to the background medical evidence and failed to make proper findings of fact regarding the appellant and partner's circumstances they will face in Pakistan with regard to medical care, the cost of medication, and proper ongoing treatment for the partner, that the Judge failed to take into account the partner's evidence of her fear of going to Pakistan in light of threats made by her previous partner from whom she suffered domestic violence, or the impact of the partners relationship with her mother, failed to take proper account of the serious and extensive medical care and treatment requirements by the appellant's partner, and the serious impact on her well being if she were required to move to Pakistan.
11. The grounds also assert the Judge failed to properly consider the Chikwamba principles. In this respect when considering article 8 outside the Rules the Judge writes at [17]:

“17 Weighing against the appellant and his partner in the consideration of the proportionality of the interference with their Article 8 rights, is the fact of the appellants relatively poor immigration history in the UK and lack of status for significant period of time. Also in consideration of the proportionality issue is the possibility of the appellant to making an application for entry clearance from Pakistan i.e. for the partner not to go with him to Pakistan. This disruption to family life would not represent a disproportionate interference with family life in circumstances in which there has been more than a technical failure to meet the requirements of the Immigration Rules - the failure was one that was directly consequent on the appellants lack of status in the UK and his having overstayed (see case of SSHD v Hayat (Pakistan) [2012] EWCA Civ 1054). It is also the case when considering the proportionality of such an interference that the partner has accepted in her oral evidence that she knew that when entering into this relationship that the appellant did not have settled status in this country and therefore might have to return to Pakistan. These are all matters that are weighed significantly in the balance against this couple even allowing that their ability to meet the financial requirements of the Rules is not in doubt.”

12. The Judge dismissed the appeal on article 3 health grounds and concluded that the decision is proportionate pursuant to article 8 ECHR. The appellant asserts that assessment is flawed as the Judge failed to take proper account of the impact on the mental health of the partner and failed to properly assess whether there was any good reason to require the appellant to leave the UK in order to apply for leave to return lawfully.
13. On behalf of the Secretary of State Mrs Aboni submitted the Judge had made no material error of law in a case in which the appellant had not demonstrated an ability to meet Immigration Rules and in which the Judge had properly considered the question of whether there were insurmountable obstacles as required by paragraph EX1. It was submitted the appellant can support his partner both financially and emotionally. The appellants immigration history was relevant to the proportionality aspect. Mrs Aboni confirmed it was not the respondent's intention to remove the partner, as she is a British citizen, and it was for her to decide whether she wished to stay in the United Kingdom or not. In relation to the submission by Mr Hussain that any application made by the appellant to re-enter would succeed, Mrs Aboni submitted it was not appropriate to pre-judge the decision of an Entry Clearance Officer (ECO) even though on the face of it the appellant might succeed. It would depend whether all the specified evidence had been provided and the appellant demonstrated to the ECO that the requirements of the relevant provisions of the Rules relied upon could be met.
14. Mr Hussain in his reply referred to the fact the Judge had found the appellant provides support for his partner who is vulnerable and that without the appellant being there the partner's well-being could be jeopardise. It was submitted the Judge failed to undertake the required holistic assessment as there are a lot of additional elements that needed to be taken into account.

### **Error of law**

15. It was submitted by Mr Hussain that the reference by the Judge to there being a test indicates a more restricted view being taken, but I find that is not made out. Although the evidence established very significant difficulties it was not made out that they could not be overcome on the basis of the evidence before the Judge. The burden of establishing this is upon the appellant and claiming an alternative finding could have been made in the grounds or submissions may be factually correct, but does not establish that the finding actually made by the Judge was not one reasonably open to him on the evidence.
16. Insurmountable obstacles can be established if there are very significant difficulties which would be faced by the appellant or his partner in continuing their family life outside the UK which could not be overcome. I find the Judge undertook the required holistic assessment of the evidence before finding that settling in Pakistan together would not entail very serious hardship for either of them.
17. It was not made out on the evidence, so far as the appellant is concerned, that very serious hardship would result. The Judge gives

adequate reasons for why the appellant will be able to relocate to Pakistan. So far as his partner is concerned, the finding of the Judge that adequate medication will be available which could be purchased from the appellant's income once he starts work shows that the same is available. There was insufficient evidence to establish that during the period between leaving the United Kingdom to that point there would be very serious hardship to either party. The partner receives prescribed medication which no doubt she could take with her and, as Mrs Aboni submitted, as a person entering Pakistan with leave as a spouse she would be entitled to whatever free medical assistance was available, albeit that it is limited. Although the partner may not speak Urdu, English is the official language of Pakistan and her husband is fluent in the required languages and will be able to assist. It was not made out the partners relationship with her own mother was such that serious hardship would endure. Contact could be maintained indirectly, and it was not made out any change in arrangements would result in serious hardship for either. The appellants partners mothers care is provided by others.

18. So far as the partners children are concerned, her son has been adopted and although her daughter lives with a relative it was not made out that the nature of any contact would change such as to lead to very serious hardship if the partner left the UK to travel with or join the appellant. As a British citizen she would be free to visit the United Kingdom if she wished to do so although the evidence clearly showed contact between them was limited with no evidence of any legitimate expectation being credibly held that the partner has any realistic prospect of further contact or of having her daughter come to live with her on the evidence before the Judge. Although it is noted the partner has suffered at the hands of others the key is the availability of support which will be provided by the appellant. As noted by the Judge, this has not been 24 hours, seven day a week support, as the partner has been holding down two jobs on a full time basis to enable them to demonstrate the minimum required level of income pursuant to Appendix FM. This clearly shows the partner is capable of being left without the appellants support which will be the situation if he found employment in Pakistan.
19. The Judge's finding concerning the lack of evidence of difficulties caused by interfaith marriage has not been shown to be a finding outside the range of those available to the Judge on the evidence, and nor was it made out that the partner as a white British national would not be able to settle in Pakistan with her husband, per se.
20. As noted above, the burden was upon the appellant to show there are insurmountable obstacles sufficient to show the existence of very significant difficulties sufficient to warrant a grant of leave to remain in the United Kingdom. It was not for the respondent to show that there are no such obstacles. This is a case in which it was known the appellants immigration status is precarious from the outset and although the Judge received evidence establishing a significant degree of hardship and/or inconvenience the finding the same did not amount

- to insurmountable obstacles has not been shown to be a finding outside the range of those available to the Judge on the evidence.
21. Article 8 does not give a person the right to choose where they wish to live.
  22. In relation to the Chikwamba argument, the facts of that case were very specific as that the partner could not return with the appellant to Zimbabwe as they had been recognised as a refugee from that country. In this case there is no such restriction on the partner returning with him to Pakistan. The option of the appellant making an application to re-enter the UK lawfully is an application that can be made whether the partner accompanies him, or she stays in the United Kingdom. It may be possible for the appellant if he applies to gain entry clearance but that is a decision that will be made by an ECO who will be in possession of all the facts including the provision of specified evidence which was not before the Judge.
  23. The Judge clearly undertook the required balancing exercise looking at both points for and against appellant when assessing the merits of the appeal. The conclusion the respondent had established the decision is proportionate is a finding within the range of those reasonably open to the Judge on the evidence. The grounds fail to establish arguable legal error material to the decision to dismiss the appeal on the basis of that evidence.
  24. Whilst there have been post hearing developments as advised by Mr Hussain and the partner is again pregnant; if such matters or her medical condition warrant the matter being reconsidered it is always open to the appellant to make a further application which can be considered on its merits by the respondent.
  25. It is clear that neither the appellant nor his partner wish to leave the United Kingdom and to return to Pakistan. It is also clear based upon the evidence considered as the whole that the appellant could not succeed under the Immigration Rules.
  26. I do not find it made out that the Judge did not properly consider with the required degree of anxious scrutiny the evidence relied upon by the appellant relating to both his and his partner's circumstances, particularly when assessing whether insurmountable obstacles exist. I do not find it made out that the reference by the Judge to a "test" indicates the Judge failed to undertake the required holistic assessment off the merits of this case.
  27. I do not find it made out the Judge was not aware of or was unsympathetic to the difficulties experienced by the partner in relation to her past life.
  28. The question before the Judge was whether the appellant had established very significant difficulties which would be literally impossible to overcome making it impossible for family life between the appellant and his partner to continue in Pakistan. Mere disagreement with the Judge's findings he had not, a suggestion the Judge could have found differently in the appellants favour, or desire to remain in the United Kingdom, does not establish arguable legal error or warrant the Upper Tribunal interfering any further in this matter.

**Decision**

**29. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

30. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson  
Dated the 30 September 2020