



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Ce-File Number: UI-2022-  
000253**

**First-tier Tribunal No:  
HU/50501/2021  
IA/01740/2021**

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On the 26<sup>th</sup> April 2022**

**Decision & Reasons Promulgated  
On the 06 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Faisal Imran  
(no anonymity direction made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Mr Bukhari, Bukhari Chambers**

**For the Respondent: Mr McVeety, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan born in 1998. He appeals with permission against the decision of the First-tier Tribunal (Judge C.R Cole) to dismiss his human rights appeal. The basis of the Appellant's claim is that he wishes to remain in the United Kingdom with his wife, who is a British citizen.

## **Background**

2. The Appellant arrived in the UK in 2012. He came in as a student, but by the following year that leave had been curtailed. The Appellant overstayed. On the 27<sup>th</sup> July 2020 he made an application for leave to remain on the basis of his marriage, to Ms IS.
3. The Respondent refused the claim and the Appellant appealed.
4. The basis of the Appellant's claim before the First-tier Tribunal was that it would be disproportionate to expect him, or more particularly his wife, to go to live in Pakistan. Ms IS came to the UK from Pakistan in 2009 as a spouse. She had been married to a British citizen in a match arranged by her family. He and his family had been cruel and had subjected her, over a number of years, to serious domestic violence. In 2015 she managed to leave her husband, get a council flat on her own and rebuild her life here away from this abuse. Unfortunately this left Ms IS estranged from her own family. When she returned to Pakistan to visit them in 2017 they were furious with her for leaving her husband. Her father and brother locked her in a room in the hope that she would change her mind and go back to him. When Ms IS managed to leave, that was the last time that she did so: she has not been back to see her family since. It is against this background that she describes the Appellant, to whom she introduced by friends in 2020, as her "rock". On appeal it was submitted that this factual matrix presented the couple with "insurmountable obstacles" to their relocation to Pakistan, and/or exceptional circumstances such that the appeal should be allowed 'outside the rules'.
5. Judge Cole was not unsympathetic. He accepted that this is a genuine and subsisting marriage, and that Ms IS had obviously been through a lot. He accepted that she would be unable to turn to her family in Pakistan for any support should she go back to live there with the Appellant, her new husband. He accepted that she had done much to establish herself in the UK. She had friends, a home and a life here. His conclusions are however expressed like this:

47. I accept that these matters mean that there would be some difficulties for the Appellant's partner if she had to return to Pakistan and these would entail an element of hardship for her. However, this is not the relevant threshold. I must assess whether, on balance, there would be very significant difficulties which could not be overcome or would entail very serious hardship. This is clearly an elevated threshold.

48. The threshold of “insurmountable obstacles” is a stringent test to be met. It must be assessed in a practical and realistic sense; however, it is still a stringent test. I have assessed all of the factors put forward by the Appellant. On balance, I find that there are not insurmountable obstacles to their family life continuing outside of the UK.

6. The written grounds of appeal were addressed in oral submissions by Mr Bukhari at a hearing before me on the 24<sup>th</sup> April 2022. The long delay since is due to my own administrative error, and for that the parties have my sincere apologies. I have listened to a recording of the hearing again before making my decision.

### **Error of Law: Discussion and Findings**

7. Although Mr Bukhari did his best to frame his challenge as an error of law, it was ultimately nothing more than a disagreement with the outcome of this appeal.
8. The Judge properly directed himself to the framework he had to follow. His starting point was the rules. The rules stipulate that a person without valid leave at the date of application must demonstrate that they can meet the requirements of paragraph EX.1 (as elaborated by EX.2) of Appendix FM:

EX.1. This paragraph applies if ...

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. For the purposes of paragraph EX.1.(b) “insurmountable obstacles” means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

9. Beyond that the Judge was obliged to consider whether there was any residual Article 8 case outside of the rules.
10. Mr Bukhari’s first submission was that in its assessment of whether there were insurmountable obstacles to this couple living together outside of the UK, the Tribunal failed to have regard to the difficult personal history of Ms IS. He submitted that she had, following her experience with her family in 2017 “vowed never to return to that country again” and that this was not taken into account. As Mr McVeety rightly observed, if that was a vow she had made it was not reflected at all in the evidence that she gave. Furthermore it was not necessarily a factor which the judge could have placed any significant

weight on. Obviously people's circumstances change. What Ms IS thought and felt in 2017 may be very different to how she feels now, having met and fallen in love with a Pakistani man. She was aware that his status in the UK was precarious, and it is a fundamental principle of Article 8 jurisprudence that the 'right to family life' does not mean the 'right to a family life in the country of your choosing'.

11. More fundamentally the difficulty that the Appellant faces in relying on his wife's circumstances is this. He and she are both healthy adults; both are Pakistani nationals; they are familiar with the culture and speak the language. They are both resourceful young people who have managed to establish lives for themselves in this, a completely new country, and do so in conditions of considerable adversity, she as a survivor of domestic violence, he as someone with no leave to remain. As the judge found, there are no apparent obstacles to them living together, and re-establishing themselves, in Pakistan. They need have nothing to do with her family and can set up home in another area entirely. Ms IS need never see them again if that is her wish. If in his submissions Mr Bukhari intended to submit that she should simply not be expected to set foot in a country where she experienced abuse, that is a submission with no arguable merit: she is of course resident in the UK where she experienced six years of sustained domestic violence.
12. Mr Bukhari's second submission was that the Tribunal erred in effectively conflating the test under EX.1 (and its wholly unnecessary exposition at EX.2) with the question of whether the refusal to grant the Appellant leave was ultimately disproportionate. In this regard he makes criticism of the passage at the First-tier Tribunal's paragraph 48 that I have set out above. I accept that there may be cases in which a couple who could not make out a case under EX.1 may nevertheless be able to show it would be disproportionate to expect them to leave the UK. Such a finding may be appropriate, for instance, where the settled spouse has a parental relationship with children in the UK who live with another parent. In that respect, Mr Bukhari is quite right to say that the two exercises require different considerations: the 'insurmountable obstacles' test is directed solely at the matter of where a couple can be reasonably expected to live, whilst the wider Article 8 exercise requires decision makers to take other, external factors into account. That is not however the case here. All of the facts relied upon by the Appellant in his case under EX.1 were exactly the same factors that informed the assessment under Article 8 outside of the rules. I am satisfied that no error arises.

## **Decisions**

13. The decision of the First-tier Tribunal is upheld.

14. There is no order for anonymity.

Upper Tribunal Judge Bruce  
2<sup>nd</sup> September 2022