



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

**Case No: UI-2022-006002**  
**First-tier Tribunal No:**  
**HU/50870/2022**  
**IA/01252/2022**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 19 September 2023**

**Before**

**DEPUTY UT JUDGE FARRELLY**

**Between**

**Mr INDREES JAVID**

Appellant

(anonymity order NOT made)

**and**

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

Respondent

For the Appellant: Mr C Avery, Senior Home Office Presenting Officer  
For the Respondent: Mr Islam.

Heard on 1<sup>st</sup> September 2023 at Field House

**DECISION AND REASONS**

1. The appellant is a national of Pakistan. He applied for leave to remain as the partner of a British citizen. He said they married here on 4 August 2022.
2. His application was considered under appendix FM and paragraph 276 ADE(1) (vi) of the immigration rules. It was refused on the basis he came to the United Kingdom as a student and overstayed since 2015. Consequently, he did not meet the immigration status requirement in the rules. There was also an issue about the English language requirement. He was not assisted by EX 1 .1.

3. He appealed. His appeal was heard by First-tier Tribunal Judge Young-Harry at Birmingham on 7 October 2022. The appeal was confined to a freestanding article 8 argument. It was dismissed.
4. The judge accepted family life was engaged and that his relationship with his partner was genuine and subsisting. It was also accepted he had established a private life here.
5. His partner is originally from Pakistan. The appellant claimed their relationship began before he came to the United Kingdom but her family opposed it. The appellant claimed they could not return to Pakistan out of fear of her relatives. He said that his own father was being harassed by her relatives and her uncle has an influential political position. It was also said that his wife had mental health issues. It was argued for these various reasons there were insurmountable obstacles to family life continuing in Pakistan.
6. The appellant had made an asylum claim which he did not pursue.
7. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Scott. She found it arguable that whilst suggesting the appellant could seek protection from the Pakistani authorities or else relocate away from his partner's family the judge did not refer to and make an assessment of the materials provided in respect of the risk. Furthermore, the judge referred to the appellant's failure to meet the English language requirements as part of the balancing exercise. However, the appellant had produced evidence which was not commented upon from Trinity College indicating he did meet those requirements .
8. Mr Avery at hearing accepted there was a material error of law in the decision. He accepted that the issue of sufficiency of protection and relocation extended beyond a protection claim and the judge should have dealt more fully with this. He also accepted that on the face of the English language testing document provided that requirement was in fact met. The primary issue however was the situation for the appellant on return.
9. Both representatives were in agreement if I confirmed an error of law the matter should be remitted to the first-tier Tribunal for a de novo hearing. Based upon the points taken I would be in agreement that there is a material error of law demonstrated and the decision cannot stand. Consequently, it is remitted to the First-tier Tribunal for a de novo hearing.

### Decision

The decision of First-tier Tribunal Judge Young- Harry contains materially errors in law and cannot stand. Consequently, it is set aside for a de novo hearing in the First-tier Tribunal before an alternative judge.

Francis J Farrelly  
Deputy Judge of the Upper Tribunal

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Immigration and Asylum Chamber