



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**  
**Prepared 8 September 2023**

Case No: UI-2023-000958

First-tier Tribunal Nos: HU/57145/2022  
IA/10152/2022

**THE IMMIGRATION ACTS**

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

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**Muhammad Fahim  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Ell, counsel

For the Respondent: Mr S Walker, Senior Presenting Officer

**Heard at Field House on 8 September 2023**

**DECISION AND REASONS**

1. The Appellant, a national of Afghanistan appealed against the decision of First-tier Tribunal Judge Foster heard on 3 October 2022 and dismissed on 20 February 2023.
2. It is apparent that issues were raised at the hearing. Raised, it seems, by the Appellant's wife or partner, of the obstacles for her to obtain a visa to visit him in Pakistan or be reunited there because she was an Afghan national.
3. It was clear that on the same day, documentation was sent to the Judge to address this issue and a request made for it to be considered after the hearing. At this stage it matters not whether something had been said to the Judge about the availability of such material at the hearing but it seems likely that it was. Clearly, as the case file shows, the documentation was presented and the request made the same day after the hearing. The request was either not put before the Judge or got lost and I reached no concluded view on that issue. I was satisfied that the document was provided which demonstrated the practical difficulties of

any Afghan national applying for entry to Pakistan. That was highly material to the Judge's decision and the failure to put that matter before the Judge and to address it, lead to procedural unfairness and a material error of law.

4. The second challenge was that the Judge did not take into account how long any separation might be between the Appellant and his partner wife after he had made entry clearance application to the UK from Pakistan. The fact of the matter was that at the hearing Appellant did not produce evidence available on the Home Office web-site at the material time which showed the waiting times or the process times that would be involved in making such application for entry to the United Kingdom. The fact is that the Appellant did not provide any evidence of that issue nor did the Respondent and nor did the Judge. When making enquires as to how long that period of separation might be: The length of separation was a material factor in the assessment that the Judge was carrying out. I concluded that on being told at the hearing before me, pursuant to my request, that the waiting time was about 24 weeks, or say six months from date of application.
5. It seemed to me difficult to criticise the Judge when the issue was not put to him, the information was not provided and he was at best making a guess as to the length of separation once the application had been made for entry clearance. I did not find that that was a material error of law but since one has been established in respect of the background evidence on access of an Afghan national to Pakistan, the matter might as well be similarly addressed.
6. In the circumstances I find that there was a material error of law in the Judge not considering the evidence that had been provided about the Appellant's wife's inability to enter Pakistan or not providing reasons why he was going to refuse to consider it or found it inadequate, with reasons.
7. **Decision.** I concluded that there was a material error of law. The Original Tribunal decision can not stand. The appeal should be remade in the First-tier Tribunal.
8. List for hearing not before Judge Foster or Judge Hamilton, who dealt with the permission to appeal in the First-tier Tribunal. The best and appropriate venue is Bradford for the First-tier Tribunal hearing. The issues to be addressed is the significance of any ban continuing in relation to Afghan citizens seeking entry to Pakistan and the difficulty of the Appellant's wife obtaining entry to Pakistan as an Afghan national.
9. On the rehearing, other findings of fact to stand unless disputed between the parties and put in writing with reasons prior to the date of the further hearing to be determined by the Judge.



Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**18<sup>th</sup> September 2023**