



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

Appeal Number: IA/11558/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 6 February 2015**

**Decision Promulgated
On 10 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

**MUHAMMAD RIZWAN BUKHARI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Iqbal counsel instructed by Denning Solicitors
For the Respondent: Mr T Wilding Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Kaler promulgated on 29 July 2014 which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 1 January 1978 and is a national of Pakistan. He was granted leave to enter the United Kingdom as a student on 3 February 2007 and that leave had been extended until 31 July 2013. He made an application for variation of leave on 23 January 2014 on the basis of his relationship with Majida Shaheen.
4. On 27 February 2014 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons: the Appellant did not meet the relationship requirements of the rules as there was insufficient evidence that they had lived together for 2 years prior to the date of application; EX.1 was considered but there were no insurmountable obstacles to the Appellant and his wife relocating to Pakistan; they Appellant did not meet the requirements of paragraph 276 ADE and there were no reasons for a grant of leave outside the Rules.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Kaler ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found in essence:
 - (a) There was insufficient evidence that the Appellant and his partner had lived together for 2 years prior to the date of the application and therefore the Appellant could not meet the requirements of Appendix FM.
 - (b) The Judge carried out an assessment under Article 8 and found that the decision to remove the Appellant was proportionate.
6. Grounds of appeal were lodged arguing that the proportionality assessment was flawed failing to give proper weight to the sponsor's ill health, the fact that the parties belonged to different sects of Islam and had failed to refer to the 5 stage test set out in Razgar [2004] UKHL 27 .
7. On 17 September 2014 permission was refused and the appeal was renewed before the Upper Tribunal. On 12 December 2014 Upper Tribunal Judge Perkins gave permission to appeal stating:

"I have given permission in this case because it is arguable that the finding that the appellant, a British citizen, can reasonably be expected to live in Pakistan is made without consideration of her claim to be a Shia Muslim in a Sunni dominated country. It is at least arguable that this might have made a difference."
8. At the hearing I heard submissions from Mr Iqbal on behalf of the Appellant that:
 - (a) He submitted that the issue of the difficulty faced by the Appellant's partner as a Shia Muslim in a Sunni country was raised in the Appellant's witness statement when he referred to clashes being an 'everyday occurrence'.
 - (b) He accepted that this issue did not feature in the submissions before the Judge as recorded in the decision.
9. On behalf of the Respondent Mr Wilding submitted that :

- (c) He accepted that the point may be raised in the witness statement but may not necessarily be relevant to the proportionality assessment.
- (d) Judge Kaler assessed the case that was put to her and the arguments placed before the Judge did not pursue the issue raised in the grounds of appeal.

Finding on Material Error

10. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
11. The Appellant applied for leave to remain as the partner of a United Kingdom citizen of Pakistani origin. The application was refused under the Immigration Rules on the basis that the Appellant and his partner did not meet the relationship requirements as they had not co habited for 2 years prior to the date of the application and there were no insurmountable obstacles to them relocating to Pakistan and therefore EX.1 did not apply. The evidence of the sponsor's health issues were not found sufficient reason to warrant a grant of leave outside the rules.
12. The grounds of appeal that were before the First-tier tribunal at 2(b) (page 12 of the bundle) stated that there were cultural and religious barriers to the parties relocating to Pakistan in that his partner would be 'disadvantaged' due to her belief in a 'different sect and her adoptability to the other sects prevalent in Pakistan making her less confident in practice.' The majority of the argument in the grounds related to the sponsors health issues and their relevance to the Article 8 assessment.
13. I have looked at the bundle of documents placed before the Judge and there was no additional evidence in the bundle to suggest that the religious difficulties that the sponsor would face if she relocated to Pakistan went beyond that which was argued in the grounds. There was a reference in the witness statement of the Appellant that there were 'clashes' but no evidence to substantiate this part of the claim or indeed directly relate them to her circumstances. The Judge records no argument placed before her on this issue and I have checked her notes of evidence and the decision accurately reflects the arguments placed before her: there was no reference my Mr Ali to the religious differences being relevant to the assessment of proportionality.
14. The Appellant in his renewed grounds of appeal relied on extracts from the COIS in relation to sectarian violence but this evidence was not of course before Judge Kaler I am satisfied that on the basis of the evidence of the arguments and evidence placed before her she was entitled to conclude that the decision to remove was proportionate and what is being advanced before me is an attempt to argue the case on a different basis to that advanced before the Judge .
15. Even if it was an error of law not to specifically refer to an issue raised solely in very general terms in the grounds of appeal this could not have been material to the outcome again because there was no more evidence adduced or indeed argument placed before the Judge to advance that argument raised so briefly in the grounds. The additional evidence relied on in the renewed grounds of appeal moreover are of such a general nature that even if they had been before the Judge they would not on any reasonable assessment tip the proportionality balance in favour of the Appellant given the other factors she had properly taken into account against the background

of non compliance with the Rules including the fact that Article 8 was a qualified right, the Appellant was well educated and resourceful, had had a good job in Pakistan, there was no evidence in relation to the sponsors claimed health conditions non of which were serious in any event, the Appellant's family would help them reintegrate, and the Appellant could re apply for entry clearance from Pakistan in due course if the sponsor chose not to accompany him.

16. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

17. **I therefore found that no errors of law have been established and that the Judge's determination should stand.**

DECISION

18. **The appeal is dismissed.**

Signed

Date 9.2.2015

Deputy Upper Tribunal Judge Birrell