



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/00888/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at FIELD HOUSE  
On 28<sup>th</sup> November 2017**

**Decision & Reasons  
Promulgated  
On 5<sup>th</sup> December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

Appellant

**and**

**M A**

(ANONYMITY ORDER MADE)

Claimant

**Representation:**

For the Appellant: Mr P Kotas (Home Office Presenting Officer)  
For the Claimant: Mr A. Saeed (Counsel)

**DECISION AND REASONS**

1. I refer to the parties as “the Secretary of State” who is the appellant in this matter and “the Claimant”. This is an error of law hearing at which I consider whether or not there is a material error of law in the decision the First-tier Tribunal (Judge Martins) (“FTT”) promulgated on 18<sup>th</sup> April 2017 in which the FTT allowed the appeal against a refusal made on 13.5.2015 to vary leave to remain as a spouse in the UK and on human rights grounds.

## **Background**

2. The claimant is a citizen of Pakistan. He entered the UK as a student in 2011 with leave until 26.11.2013. He married his wife on 18.11.2013. She is a citizen of Tanzania but has ILR in the UK on account of having been a victim of domestic violence. There are no children.

## **FTT decision**

3. The FTT found that the Claimant failed to meet the 5 year route on financial grounds and went on to consider the 10 year route having regard to insurmountable obstacles to enjoying family life outside the UK [34-35]. The FTT took into account that the marriage occurred at a time when the appellant was a student [37]. It found that the spouse had lived in the UK for 15 years, there was no place available in Tanzania, the claimant's family did not approve of the marriage, and the spouse suffered from ill health. The FTT concluded that there were insurmountable obstacles to integration in Pakistan or Tanzania with reference to paragraph 276ADE. It acknowledged that the spouse had married on the understanding that she would not live in Pakistan or Tanzania. It further found that in terms of the Claimant's return to Pakistan the decisions of **Chikwamba** and **MA (Pakistan)** applied [39].

## **Application for permission to appeal**

4. In ground 1 it was contended that the FTT erred by appearing to allow the appeal under paragraph 276ADE(1)(vi) with reference to insurmountable obstacles rather than very significant obstacles to integration. The FTT failed to conduct a balanced consideration of all the factors in particular regarding Pakistan; the spouse speaks Urdu, she has communication with the appellant's parents and there was no evidence of any disapproval.
5. In ground 2 the Secretary of State argued that the FTT failed to consider if there were compelling circumstances and to take into account the public interest factors under section 117B, under Article 8.

## **Permission grant**

6. Permission was granted by FTJ Hollingworth who found that there were arguable grounds that the FTT failed to set out sufficient analysis of the degree of weight to be attached to factors relevant to very significant obstacles. The FTT's error in confusing the two tests may have affected the factors in assessing the cumulative weight. In considering Article 8 the FTT failed to look at statutory provisions as to public interest under section 117B.

## **Rule 24 Response**

7. There was no Rule 24 response from the Claimant.

## **Submissions**

8. I heard submissions from both representatives which are set out in the record of proceedings. Mr Kotas submitted that the FTT was considering EX 1 with reference to EX 2 and the test was insurmountable obstacles to family life outside of the UK. The decision referred to the submissions but there was little in the way of findings. There was no proper analysis or assessment of the facts. Mr Kotas argued that whilst the grounds referred to paragraph 276ADE the focus of the appeal was on the lack of reasoning under Ex1 and Ex2.
9. Mr Saeed acknowledged that the FTT had not properly considered Ex 1(b)/Ex 2 but that the substance of the decision albeit brief was sound and the outcome would have been no different. The Claimant relied on the 10 year route as the financial requirements were not met. The medical evidence was that the spouse had thyroid difficulties and a miscarriage in the past and the Claimant suffered from depression.

## **Discussion and conclusion**

10. I am satisfied that the Secretary of State's grounds are made out and that the FTT decision should be set aside as it contains a material error in law. The FTT failed to apply the correct test and failed to consider the relevant law namely Ex1(b) and Ex2. The FTT failed to adequately reason the decision and or make proper findings of fact as to why the difficulties experienced by the couple could not be overcome in Pakistan or Tanzania. It is unclear whether the appeal was allowed under Appendix FM or under paragraph 276ADE and which was compounded by the confusion of the tests. There was no consideration of Article 8 although I acknowledge that if the FTT decided to allow the appeal, which is a human rights appeal, on the grounds that the Rules under Appendix FM were met it may not have been necessary to go on to look at Article 8. In light of the decision that I have made as to error of law it remains the position that under Article 8 outside of the Rules requires section 117B factors to be considered.
11. As the FTT failed to make specific findings of fact and give adequate reasons, I have decided that it would be appropriate for the appeal to be reheard before the First -tier Tribunal (excluding Judge Martins). Both representatives indicated their agreement to this disposal in the event of finding an error of law.

## **Decision**

12. There is a material error of law in the decision which shall be set aside.

The appeal is to be reheard before the First -tier Tribunal at Hatton Cross (excluding Judge Martins).

Signed

Date 2.12.2017

GA Black  
Deputy Judge of the Upper Tribunal

**Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NO FEE AWARD

Signed

Date 2.12.2017

GA Black  
Deputy Judge of the Upper Tribunal