



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

Appeal Number: PA/01786/2016

THE IMMIGRATION ACTS

**Heard at : IAC Birmingham
On : 12 June 2017**

**Decision Promulgated
On : 14 June 2017**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SHAZAIB MUZAFFAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bradshaw, instructed by Hansan Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 10 February 2016 to refuse his protection and human rights claim.

2. The appellant is a citizen of Pakistan, born on 1 January 1989. He entered the UK on 25 January 2012 with a Tier 4 student visa valid until 16 June 2013 and was subsequently granted further leave until 30 October 2014. He claims

to have returned to Pakistan on 15 May 2014 and to have re-entered the UK on 4 October 2015 using a British passport provided by an agent. He claimed asylum on 28 October 2015 and was subsequently interviewed about his claim. His claim was refused on 10 February 2016.

3. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 30 August 2016 and was dismissed in a decision promulgated on 3 October 2016. Permission was granted on 26 October 2016.

4. The appellant's asylum claim was based upon his alleged involvement with the United Kashmir's People's National Party (UKPNP) in Pakistan and the UK. The respondent, in refusing his claim, did not accept that he had been involved in the UKPNP and did not accept his account of the problems he had experienced in Pakistan. The respondent concluded that he would be at no risk on return to Pakistan and did not accept that his removal to Pakistan would breach his human rights.

5. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Colvin. The judge did not accept the appellant's claim to have been involved with the UKPNP in Pakistan and concluded that he would be at no risk on return as a result of his limited activities in the UK. She dismissed the appeal on all grounds.

6. The appellant sought permission to appeal Judge Colvin's decision to the Upper Tribunal on grounds challenging her adverse findings on his asylum claim and referring to his marriage to a British citizen who had lived in the UK all her life. Permission to appeal was granted only on the grounds that the judge had failed to consider Article 8 which had been raised in appellant's representative's skeleton argument. The grounds relating to the appellant's asylum claim were not considered to disclose any arguable error of law by the judge.

7. The appeal came before me on 12 June 2017. It was agreed that the only issue was whether the judge had erred by failing to consider Article 8.

8. Mr Bradshaw submitted that the decision confirmed at [7] that the judge had before her evidence of the appellant's Islamic marriage to his British wife on 30 May 2016. He advised me that the appellant had different legal representatives before the First-tier Tribunal and he therefore had limited knowledge of what had occurred at the hearing. However his instructions from the appellant and his wife were that counsel had drafted a handwritten statement from the wife and had handed that up to the judge and that counsel had offered oral evidence from the appellant's wife but the judge had declined to hear from her due to lack of time. He did not have a copy of that statement, but submitted that in any event there was a strong and compelling case for leave to remain outside the immigration rules, particularly as the appellant's wife was now pregnant, although the evidence of that was not before the judge. Mr Bradshaw submitted that the judge therefore ought to have considered Article 8.

9. Mr Mills submitted that the appellant's grounds of appeal before the First-tier Tribunal did not raise Article 8 and therefore, in accordance with the amendments made by the Immigration Act 2014 the Tribunal could not have considered such a ground without the appellant having first applied to amend the grounds to include Article 8 and the respondent having given consent to admit the ground. In any event, even if consent were taken to have been given, the appellant could not have succeeded on such a ground. His marriage was not valid under UK law and there was no evidence at all of cohabitation. There was no evidence of insurmountable obstacles to family life continuing in Pakistan. Therefore the absence of consideration of Article 8 was immaterial.

10. I advised the parties that I found no error of law in the judge's decision and I now give my reasons for so concluding.

Consideration and findings.

11. As Mr Mills submitted, Article 8 was not raised at all in the grounds of appeal before the judge. I have some reservations as to the merits of his submission that the judge had no statutory entitlement to consider such a ground without consent being given by the Secretary of State, particularly when Article 8 was in fact considered in the refusal decision. Nevertheless the fact remains that, other than a brief mention of Article 8 in the skeleton argument produced for the appeal, there is no indication in any of the papers before me that Article 8 was actively pursued as a ground of appeal. The appellant made no mention of Article 8 in his witness statement. I am not prepared to accept the appellant's claim that Judge Colvin declined to hear from his wife owing to a lack of court time and I note that neither Mr Bradshaw nor Mr Mills had a copy of any handwritten statement from the appellant's wife and neither was there such a document on the Tribunal file or any indication from the judge that such a document had been adduced. Indeed Judge Colvin's clear and detailed record of proceedings makes no reference at all to such a witness statement and clearly indicates that no submissions were made on Article 8. The only reference, in the judge's record of proceedings, to the appellant's marriage, was as part of examination of chief when the appellant was explaining the documents he had submitted and the risk he claimed to face on return to Pakistan. That is reflected in [7] of the judge's decision.

12. On that basis alone I find no error of law on the part of the judge by making no findings on Article 8. However, and in any event, even if she ought to have at least addressed Article 8, any arguable failings in that regard cannot possibly be considered as material given the limited evidence before her and the lack of any merit in such a claim. The only evidence before the judge which could possibly be taken as relating to an Article 8 claim consisted of a copy of the appellant's wife's British passport, the Islamic marriage certificate, his wife's payslip and one photograph of the marriage ceremony, and some evidence of the appellant's past studies in the UK. There was no evidence of a valid marriage under UK law and no evidence of cohabitation or of a subsisting

relationship. Neither was there any evidence of, or suggestion that there may be, insurmountable obstacles to family life continuing in Pakistan - on the contrary the evidence was that the appellant's wife had ties to Pakistan. Plainly the requirements of Appendix FM could not be met, nor those of paragraph 276ADE(1) in relation to private life. I asked Mr Bradshaw to show me any evidence suggesting compelling circumstances outside the immigration rules and he was only able to suggest the fact that the appellant's wife was pregnant and that she had lived all her life in the UK but he also conceded that there was no evidence of the pregnancy before the judge. It is plain that there was no evidence before the judge (or before myself) of any compelling circumstances justifying a grant of leave outside the rules and, again, the Article 8 case before the judge, if there indeed was one at all, was hopeless and could not possibly have succeeded. Therefore any arguable error by the judge in failing to make findings on Article 8 was immaterial.


13. In light of the cogently reasoned and properly made findings on the appellant's protection claim, and having regard to the above in relation to Article 8, the judge was unarguably entitled to conclude that the appellant was at no risk on return to Pakistan and that his removal would not breach his human rights and to dismiss the appeal. The grounds of appeal do not disclose any errors of law in the First-tier Tribunal's decision.

DECISION

14. The appellant's appeal is accordingly dismissed. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appellant's appeal therefore stands.

Anonymity

The First-tier Tribunal made an order for anonymity. I see no need for anonymity in this case and I therefore discharge the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 
Upper Tribunal Judge Kebede
2017

Dated: 12 June