



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06335/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On 9 July 2018

Decision & Reasons Promulgated
On 16 July 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

RH
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Tariq, West London Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

1. The Appellant, RH, is a citizen of Pakistan. His date of birth is 25 July 1982. He made an application on human rights grounds for leave to remain in the UK on 7 March 2017. The application was refused on 12 May 2017. The Appellant appealed against this decision. His appeal was dismissed by First-tier Tribunal Judge L Murray. She dismissed the Appellant's appeal under Article 8, following a hearing on 19 March 2018. The Appellant was granted permission to appeal by First-tier Tribunal Judge C A Parker on 9 May 2018. The matter came before me on 9 July 2018 to determine if Judge Murray made an error of law.
2. The Appellant came to the UK on 24 January 2004 having been granted a student visa. He was granted periods of leave until 24 July 2009. An application for LTR was refused on 9 November 2009. The Appellant appealed. His appeal was dismissed. An application for permission was refused. The Appellant applied for leave outside of the rules on compassionate grounds based on his relationship with MB ("the Sponsor"). This application was refused with no right of appeal on 19 April 2013. On 8 January 2015 the Appellant made an application under article 8. This was refused on 14 January 2015. The Appellant withdrew his appeal. On 7 March 2017 the Respondent received a response to a s.120 notice from the Appellant which gave rise to the decision on 12 May 2017.

The findings of the FtT

3. The judge heard evidence from the Appellant and the Sponsor. She accepted that they were in a genuine and subsisting relationship. She considered insurmountable obstacles in the context of EX.1, considering the Sponsor's evidence including that about a trip to Pakistan in 2005 when she was aged 14. During this visit she was held hostage by her uncle and not allowed to speak to her parents. She was emotionally and physically abused. She tried to commit suicide on return. She has anxiety and depression and is receiving treatment. She would not be able to cope in Pakistan. In October 2017, she overdosed and cut her wrist. She has suffered from severe depression for about 4 years.
4. The judge considered evidence in the form of NHS letters about treatment for depression, back pain and fertility issues. The judge at [28] considered a letter dated 26 February 2018 in which it is stated that the Sponsor will be offered an appointment with "Talking Therapies" in around 8 weeks' time. The judge recorded that there were earlier letters from the NHS in relation to Talking Therapies which indicated that the Sponsor had missed several sessions and they have tried to contact her on a number of occasions by phone and letter to no avail. The judge at [29] stated that there was confirmation of an attempted suicide in October 2017. The judge considered the document at p29 of the Appellant's Bundle from Liaison Psychiatry Wexham Park Hospital NHS, and observed that the Sponsor cited as a trigger an argument with her

husband. It is recorded in the notes considered by the judge that the Sponsor denied suicidal ideation and regrets her actions.

5. The judge accepted that the Sponsor was suffering from depression and anxiety and that she took medication. She found that there was no supporting medical evidence that she would be at risk of suicide if she were to go to Pakistan (see [30]). The judge found at [31] that what was “manifestly lacking” was supporting evidence that the Sponsor would not be able to obtain any of the treatments she is currently receiving in the UK in Pakistan.
5. In relation to the incident in 2005, the judge found that although the Sponsor was not precise about what had happened to her in Pakistan, it was reasonably clear that she was sexually assaulted. The judge accepted that she had been and that it would have been extremely distressing for her. The judge noted that the Sponsor was now an adult. She took into account the Appellant’s evidence that the uncle who perpetrated the assault lived about 2-3 miles from his home area. However, the judge concluded that Pakistan in a very large area. In addition, that judge gave weight to the Appellant having studied here for 5 years and that he has qualifications which would enhance his prospects of finding employment. There was, as found by the judge, no reason why the couple could not live in any big city in Pakistan. The judge found at [34] that the Appellant has family in Pakistan with whom he remains in contact. She found that although the Sponsor does not want to go to Pakistan, there were no insurmountable obstacles.
6. The judge at [20] considered Mr Tariq’s submission that the reasons why the Sponsor could not live in Pakistan were psychological. She found that there was no supporting medical evidence of the alleged adverse impact of relocation or of suicidal ideation because of the events of 2005. The judge concluded that the Sponsor could speak Urdu. She concluded that whilst she would have less contact with her mother and family in Birmingham, the Sponsor’s own evidence was that she sees them once a month or once every two months only and telephone/Skype can continue.
7. The judge considered the appeal under para 276ADE, concluding that there were no very significant obstacles to integration for the Appellant who had lived in Pakistan until he was aged 22. The judge considered the appeal outside of the Rules, concluding that the decision was proportionate. She did not find that the Appellant’s right to family or private life was outweighed by the public interest in removal.

The grounds of appeal

8. The ground of appeal is that there was inadequate assessment of the Sponsor’s medical condition and her rights under article 8. It was submitted that in the absence of a therapy plan the conclusion of the judge is incomplete. The judge when concluding that there was no supporting evidence of the adverse impact of relocation or of suicidal ideation because of events in 2005, failed to consider the attempted suicide in October 2017. She made no reference to this when assessing proportionality.

9. The judge did not consider that the Appellant was arrested following an alleged assault on the Sponsor. She made no assessment of the Sponsor's rights under Article 8. The sponsor will be in a precarious situation in Pakistan without the support of the Appellant should they have a fall-out.
10. Mr Tariq made oral submissions which were different to what was raised in the grounds. It was accepted that the evidence did not amount to insurmountable obstacles. It was asserted that the judge did not properly consider exceptional circumstances outside of the Rules, considering the treatment of rape victims in Pakistan (see [12] of the decision and pp. 54 and 55 of the supplementary AB), that it was accepted that the Appellant's wife ("the Sponsor") suffered anxiety and depression (see [30]), that she has not visited Pakistan to visit her father's grave (see [20] of her witness statement). The judge accepted that she had been assaulted as a child and that return would be distressing for her. The judge did not consider the Sponsor's recent suicide attempt in 2017 when assessing proportionality.
11. Ms Ahmad referred me the grounds and the grant of permission which relate to insurmountable obstacles which she submitted was a stringent test. In support she relied on *Mudibo* [2017] EWCA Civ 1959 and *Kaur* [2018] EWCA Civ 1423. There was no evidence of suicidal ideation at the time of the hearing or that this would be triggered on return to Pakistan (see p.30 of the supplementary AB). There was no evidence of lack of treatment in Pakistan. The judge completely appreciated the Sponsor's wife's mental health.
12. In response Mr Tariq distinguished the above cases and referred me to [25], [26] and [28] of the Sponsor's witness statement and submitted that there was no assessment of the emotional impact of return to Pakistan.

Conclusions

13. Mr Tariq narrowed the grounds. He conceded that the judge did not err in her assessment of insurmountable obstacles. His argument was that she did not consider the psychological impact of the decision on the Sponsor when assessing proportionality outside of the Rules. There is no substance in this argument. The judge's assessment of the evidence was comprehensive. The judge considered all material matters. She considered the suicide attempt in 2017 at [29]. She was entitled to conclude that there was no medical evidence linking this with what had happened to the Sponsor in 2005 (see [33]). There was no medical or independent evidence before the judge that the Sponsor's mental health would deteriorate on relocation. In any event, there was no evidence that there would not be treatment available to her in Pakistan. There was no evidence of ongoing treatment to treat the Sponsor's mental health condition. This was an unsupported assertion made by the Sponsor. The offer of an appointment from Talking Therapies was not evidence of ongoing treatment. The incident including the Appellant's arrest does not assist his appeal. In any event, there was no evidence before the judge of a material support network here in the UK

available to the Sponsor. She was not receiving ongoing treatment and there was no evidence before the judge of a close and supportive family here on which she depends (see [33]).

14. The judge considered all material matters when considering proportionality. She was entitled to conclude that there were no compelling circumstances to allow the appeal outside of the Rules.
15. There is no error of law. The decision of the judge to dismiss the Appellant's appeal is maintained.

Notice of Decision

The appeal is dismissed

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Signed *Joanna McWilliam*

Date 12 July 2018

Upper Tribunal Judge McWilliam