



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/06404/2016

THE IMMIGRATION ACTS

Heard at Field House
On 9 March 2018

Decision & Reasons Promulgated
On 16 May 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ZAHIR AHMED
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer

For the Respondent: Mr J Gajjar, Counsel instructed by Law Lane Solicitors

DECISION AND REASONS

1. The respondent (hereafter the claimant) is a citizen of Pakistan who entered the UK illegally in 2006. The appellant (hereafter the Secretary of State or SSHD) made a decision on 22 February 2016 refusing him leave to remain on family and private life grounds. The claimant's appeal came before Judge Miller of the First-tier Tribunal (FtT). On 10 July 2017 Judge Miller allowed the claimant's appeal.

2. The judge was dissatisfied with a number of aspects of the claimant's case, considering him dishonest in stating at one point that he no longer had any property in Pakistan (paragraph 26) and not credible in claiming he no longer had anyone in Pakistan to return to (paragraph 26) or who would be able to assist him in getting work (paragraph 29). In addition the judge, whilst accepting that the sponsor (the claimant's partner) had medical problems, did not consider these posed insurmountable obstacles to the couple living their family life in Pakistan (paragraphs 28 and 30). The judge also considered that there were public interest considerations counting against the claimant, in particular that he had entered the UK illegally (paragraph 31). The judge also noted that the claimant had entered into his relationship with the sponsor when he knew his immigration status was precarious (paragraph 33). The principal reasons the judge gave for allowing the appeal were set out most concisely in paragraphs 34 and 35:

“34. As I have stated above, I have been troubled with this case, and have considered whether the appellant should not be required to return to Pakistan, where I am satisfied that he could reside and probably work for a short time whilst a further application is processed. Although it might be difficult for the sponsor, she could continue to reside here, probably living with or near to her daughter. However, as Miss Bexson pointed out in submissions, the sponsor would be unable to meet the financial requirements if he sought to return.

35. I also find that having been given leave to remain between 2013 and 2015, thereby giving hope if not expectation to the appellant and sponsor that he would eventually be allowed to settle, to require him to now be removed to Pakistan would, on balance, not be in the public interest and would not be proportionate, having regard to the **Razgar** test.”

3. The SSHD's grounds submitted that in allowing the appeal on this basis the judge made a materially misdirection in law, since the situation the claimant was in at that time when he had been granted limited leave previously (when the sponsor had a 15 year old daughter) was different from the situation now; some four years later (when the daughter was an adult). Mr Nath reiterated the SSHD's written grounds albeit accepting they were incorrect as regards the age of the sponsor's daughter (who was in fact born in 1985).

4. Mr Gajjar contended that the judge's decision was unimpeachable; the judge considered all the evidence in depth; the judge made certain adverse findings but they were not determinative. The judge's decision was in line with the **MM (Uganda)** [2016] UKSC 4 case.

5. Having considered the respective submission of the parties I have concluded that the judge materially erred in law.

6. First the application the claimant made to the SSHD was for leave to remain under the Immigration Rules as well as outside the Rules. The judge failed to consider the appellant's case under the Rules expressly and, to the extent he did so implicitly, all the indications are that he was satisfied their requirements would not be met. Thus at

paragraph 30 he found there were no insurmountable obstacles to the claimant and his wife relocating to Pakistan. If the Rules were not met, then it was incumbent on the judge to attach significant weight to them when conducting the Article 8 proportionality assessment outside the Rules: see Hesham Ali [2016] UKSC 60. More generally it is not apparent that despite identifying certain public interest factors weighing against the claimant, that the judge actually put them in the balance when assessing whether the claimant had established compelling circumstances such as to warrant a grant of further leave outside the Rules.

7. Second, the fact that the claimant had been given leave to remain between 2013 and 2015 could not of itself constitute a sufficient ground for allowing the appeal, otherwise any grant of limited leave would be regarded as justifying indefinite leave. A grant of limited leave on family life grounds does not, without more, create a legitimate expectation of its renewal. The facts of this case are indeed a good demonstration of why a decision based on family life in the past cannot create such a legitimate expectation, since the sponsor's daughter adult daughter now lived apart.
8. Third, the fact that the sponsor would be unable to meet the financial requirements of the Rules pertaining to partners if he was in Pakistan was not a proper basis for allowing the appeal, since it had not been established that the sponsor could meet those requirements even if the claimant was in the UK. At the very least the ability of the appellant to meet such requirements was something that needed to be established by evidence. (The finding at paragraph 32 that the claimant if permitted to remain would be "to likely to be employed again" does not necessarily show that his earnings or the couple's combined income would suffice to meet the amount set by the Rules). In allowing the appeal the judge appears to have had in mind the Chikwamaba [2008] UKHL 40 principle but:
 - (1) it appeared that there was at least one requirement of the Rules that could not be met either in-country or on return (the financial requirement(s));
 - (2) the guidance given by the House of Lords in Chikwamaba did not seek to treat the possibility of a claimant succeeding in an entry clearance application as determinative. It was still always necessary to conduct a proportionality assessment; see also Hayat [2012] EWCA Civ 1054 and Tikka [2018] EWCA Civ 642.
 - (3) on the judge's, own finding at paragraph 32 the fact that the claimant commenced his relationship with his partner at a time when he knew her immigration status was precarious meant he was obliged to attach "little weight" to that relationship. Given that the judge purported to allow the appeal on Article 8 grounds outside the Rules he could not rely on the strength of this relationship as a major factor in allowing the appeal.
9. For the above reasons, I conclude that the judge materially erred in law. I set aside the judge's decision.
10. I turn to consider whether I am in a position to re-make the decision without further ado. I am satisfied that I am. The parties have been afforded the opportunity to submit

further evidence and make submissions. There is no real dispute of fact concerning the essential elements of the claimant's factual circumstances as found by the First tier Tribunal judge.

11. Having considered the evidence as a whole, I find that the decision of the SSHD does not constitute disproportionate interference with his right to respect for family life. The claimant's case does not disclose compelling circumstances. It is clear that return to Pakistan would not mean he faced very significant obstacles to reintegration into Pakistan society. As was found by the First tier Tribunal judge, and not refuted by any of the evidence or submissions before me, there would not be insurmountable obstacles to the claimant's sponsor accompanying him to Pakistan. The sponsor had medical difficulties but she would be able to access suitable treatment if needed in Pakistan. Her own daughter was now an adult who lived an independent life elsewhere. The claimant had previously been granted limited leave on the basis of family life but it is not suggested there was any basis for that other than the family life circumstances prevailing at that time, when the sponsor had a 15-year-old daughter; and there had since been a material change of circumstances in that regard. The SSHD had not given any undertaking to grant further leave once his limited leave expired. In addition, whilst the claimant spoke English, he was not financially independent and there were strong public interest considerations weighing against the claimant, including the fact that he had entered the UK illegally and had commenced his relationship with the sponsor at a time when his immigration status was precarious. For reasons set out earlier the claimant's case is not a case that can benefit from the application of Chikwamba principles.
12. For the above reasons the decision I re-make is to dismiss the claimant's appeal.
13. To conclude:
the decision of the First-tier Tribunal is set aside for material error of law;
the decision I re-make is to dismiss the claimant's appeal.

No anonymity direction is made.

Signed

Date: 11 May 2018



Dr H H Storey
Judge of the Upper Tribunal