



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15369/2016

THE IMMIGRATION ACTS

Heard at Manchester
On July 27, 2018

Decision & Reasons Promulgated
On August 2, 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR YASIR RIAZ
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Mr Ranjah, Legal Representative

DECISION AND REASONS

1. The respondent in these proceedings was the appellant before the First-tier Tribunal. From hereon I have referred to the parties as they were in the First-tier Tribunal so that, for example, reference to the respondent is a reference to the Secretary of State for the Home Department.
2. No anonymity direction is made.

3. The appellant is a national of Pakistan and on October 18, 2013 the appellant entered the United Kingdom as the spouse of a person present and settled in the United Kingdom and he was granted leave to enter and remain until June 26, 2016. On June 6, 2016 the appellant applied for leave to remain as the spouse of a person present and settled in the United Kingdom. The respondent refused his application on June 14, 2016 as he was not satisfied the appellant satisfied the suitability requirements and his application was refused under paragraph S-LTR 1.6 of Appendix FM of the Immigration Rules. The respondent further stated that whilst it was accepted the appellant met the requirements of section EX.1(a) of Appendix FM of the Immigration Rules he could not succeed under the Immigration Rules because he had not satisfied paragraph S-LTR 1.6 of Appendix FM of the Immigration Rules.
4. The appellant lodged grounds of appeal on June 20, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. His appeal came before Judge of the First-tier Tribunal Birrell (hereinafter called "the Judge") on December 21, 2017 and she allowed the appellant's appeal on human rights grounds on December 29, 2017.
6. The respondent appealed this decision on January 5, 2018 on the grounds that the Judge had erred by finding the respondent had not satisfied the burden of proof placed on him and thereafter had failed to identify compelling circumstances to justify consideration of whether there would be a breach of article 8 ECHR.
7. Permission to appeal was granted by Judge of the First-tier Tribunal Keane on June 4, 2018 who rejected the respondent's first ground of appeal namely that the Judge had incorrectly dealt with the issue relating to paragraph S-LTR 1.6 of Appendix FM of the Immigration Rules but found it arguable that by allowing the appeal under article 8 the Judge had made a rational finding by failing to refer to compelling circumstances which might have required the grant of leave.
8. The appellant's representatives filed a Rule 24 response which referred to paragraphs 11 and 25 of the Judge's decision in which the Judge recorded that the respondent's representative at the First-tier hearing accepted that if paragraph S-LTR 1.6 of Appendix FM of the Immigration Rules did not apply then the appeal would succeed.

PRELIMINARY ISSUES

9. At the commencement of the hearing I referred Mr Tan to the appellant's Rule 24 response and in particular paragraphs 11 and 25 of the Judge's decision in which she had recorded that the presenting officer in the First-tier Tribunal had accepted that if the Tribunal found the appellant had not used a proxy then the appellant should succeed in his appeal.
10. Mr Tan agreed that his colleague had accepted that if the appellant satisfied the Immigration Rules then his appeal should be allowed under article 8 ECHR.

11. The Court of Appeal in TZ (Pakistan) and PG (India) and The Secretary of State for the Home Department [2018] EWCA Civ 1109 stated, "The policy of the Secretary of State as expressed in the Rules is not to be ignored when a decision about article 8 is to be made outside the Rules... where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal provided their case engages article 8(1), for the very reason that it would then be disproportionate that person to be removed."
12. The respondent had been refused permission to challenge the Judge's findings on the ETS issue. The appellant and therefore satisfied the Immigration Rules for leave to remain as the spouse of a British citizen. Clearly there was family life.
13. Mr Tan accepted his challenge that the Judge had not addressed article 8 correctly had no merit in light of his colleague's concession and current case law.

DECISION

14. There is no error in law and I uphold the decision.

Signed

Date 27/07/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I make no fee award as none was made in the First-tier Tribunal.

Signed

Date 27/07/2018



Deputy Upper Tribunal Judge Alis