



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/18111/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27 June 2018

Decision & Reasons Promulgated  
On 04 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

FARHAT [K]  
(ANONYMITY DIRECTION NOT MADE)

Claimant

**Representation:**

For the Appellant:

Ms Z Ahmad, Home Office Presenting Officer

For the Claimant:

Mr Z Ali, Solicitor instructed by Freeman Chambers Solicitors

**ERROR OF LAW DECISION AND REASONS**

1. This is an appeal by the Secretary of State ("SSH") in respect of a decision and reasons by First-tier Tribunal Judge S Aziz ("FtT") promulgated on 18 December 2018 allowed the Claimant's appeal against a decision made by the Secretary of State refusing his application for further leave to remain on family and private life grounds.

2. The material issue before the FtT was whether or not the Claimant could show that there were “insurmountable obstacles” to him and his wife in continuing family life in Pakistan, with reference to the requirements of EX.1(b) of Appendix FM.
3. The FtT heard evidence from the Claimant. His wife had intended to give evidence at the FtT but was unable to because she had leave to attend a funeral later that day. She had however provided a witness statement as had the claimant. In the determination the FtT stated at [28]:

“His wife fears some of her family members in Pakistan because of the family feud. He does not know much about the feud because his wife did not want to discuss the matter with her [sic]. However he is aware that his wife is still scared of returning to Pakistan because of this feud. The problems which caused her to flee Pakistan are still there.”

At [40] of the determination states:

“It would have been helpful to have had evidence from the appellant’s wife and have her explain more fully the basis of her asylum claim.”

At [43] the FtT stated:

“As I indicated above it would have been preferable to have heard from Ms Shahnaz. However, the appellant was consistent in his evidence that the family feud was still ongoing. He was extensively cross-examination on the matter by Ms Bell. I accept his evidence.”

4. The FtT found that because there was an ongoing family feud which had led to the claimant’s wife being granted asylum in 2002, that this amounted to an insurmountable obstacle to family life continuing in Pakistan.

### **Grounds of Application for Permission to Appeal**

5. The Secretary of State argued that the FtT failed to either give adequate reasons or make proper findings in terms of the insurmountable obstacles issues. This amounted to an error of law as it was not clear to the Secretary of State why the decision was reached.
6. No Rule 24 notice was served by the Claimant in this matter.

### **Error of law hearing Submissions**

7. At the hearing Ms Ahmad produced and relied on relevant case law, namely **SS (ILR: Article 8: return) Sri Lanka [2004] UKIAT 00126** and the decision of the Supreme Court in **Agyarko [2017] UKSC 11**.
8. She relied on the grounds of appeal and further submitted that the FtT failed to give adequate reasons or make an assessment of the specific facts as to the continuing existence of a family feud in Pakistan and what that entailed. This was needed particularly in light of the fact that the Claimant’s wife had been granted asylum in

2003, over fourteen years ago. There was no detailed reasoning provided by the FtT in terms of the material issue.

9. Mr Ali submitted that the FtT had considered and looked at all the evidence available in relation to the existence of a family feud which involved domestic violence and family issues. The FtT was satisfied that the circumstances still pertained. He submitted that the circumstances were entirely different from **SS (Sri Lanka)**. The FtT had referred to extensive cross-examination of the Claimant on which it had based its decision that the Judge was satisfied that insurmountable obstacles existed. The FtT did not need to provide extensive reasons if the decision made sense.

### **Findings and Conclusions**

10. I find that there was a material error of law in the decision and reasons before the First-tier Tribunal and that the grounds of appeal relied on by the Secretary of State are made out. The FtT found that there were insurmountable obstacles based on the fact that the Claimant's wife was granted asylum in 2003, however it was by no means clear from the decision what the circumstances of the family feud were and whether or not those circumstances still pertained some fourteen years later. This was the material issue before the Tribunal and it is reasonable, particularly given the length of time since asylum was granted, for the Tribunal to make some specific findings and give reasons as to why it considered there to be insurmountable obstacles. Accordingly, I have decided to return the decision to the First-tier Tribunal Judge Aziz at Taylor House, for further consideration and for him to make clear his findings and reasons. It is also of note that whilst he referred to extensive cross-examination of the Claimant, I am unable to read the Judge's handwriting of the Record of Proceedings and so cannot decipher what the evidence was.

### **Notice of Decision**

There is a material error in law to the extent that findings of fact on material issues have not been made nor adequately reasoned. The findings of fact are preserved. The decision is returned to the FtT (Judge Aziz) for review and rectification for findings and reasons to be given on the issue of insurmountable obstacles on return to Pakistan.

No anonymity direction is made.

Signed

Date 30.6.2018

GA Black

Deputy Upper Tribunal Judge G A Black

**TO THE RESPONDENT**  
**FEE AWARD**

No fee award made.

Signed

Date 30.6.2018

GA Black  
Deputy Upper Tribunal Judge G A Black