



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

Appeal Number: HU/16604/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 June 2019  
Extempore**

**Decision & Reasons Promulgated  
On 02 July 2019**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MR TARIQ MEHMOOD  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Mian, Counsel, instructed by NR Legal Solicitors  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Bowler (“the judge”), promulgated on 28 January 2019, in which he dismissed the Appellant’s appeal against the Respondent’s decision of 16 November 2017, which had refused his human rights claim.
2. The Appellant, a national of Pakistan, was in what has always been accepted as a genuine and subsisting relationship with a British national

Ms S. It was said that Ms S was married to a serving police officer in Pakistan and had four children with him. It was also said that the husband had treated Ms S very badly over the course of time and had refused to divorce her. Ms S had allegedly been issued with an emergency travel document by the British authorities in Pakistan due to her problems with her husband. As a result of these circumstances the Appellant's Article 8 claim was put forward primarily on the basis that he and Ms S would not be able to go and live together in Pakistan, in part, because of risks emanating from Ms S's husband, but also because it would be impossible for them to live together in that country out of wedlock.

### **The judge's decision**

3. The judge correctly identified the core issue in the appeal before her, namely whether or not there were "insurmountable obstacles" to the couple enjoying family life outside of the United Kingdom. This question was to be addressed both within and without the context of the relevant Immigration Rules.
4. For numerous reasons set out in paras. 40-71, the judge concluded that there were no such obstacles. In addition, the judge went on to conclude that there were no exceptional circumstances in the Appellant's case warranting an allowance of the appeal on Article 8 grounds.

### **The grounds of appeal and grant of permission**

5. The grounds of appeal are not entirely clear, but in essence they attack various findings made by the judge during the course of her decision.
6. In granting permission to appeal, First-tier Tribunal Judge Ford purported to limit the grant to a single ground. However, as I explained at the hearing, the fact is that Judge Ford did not state that restriction above the horizontal line on the grant notice and in light of Safi and others (permission to appeal decisions) [2018] UKUT 388 (IAC), the grant of leave should not be restricted. I proceeded to hear the Appellant's challenge on the basis that all the grounds of appeal were before me.

### **The hearing**

7. Mr Mian applied for an adjournment at the outset of the hearing on the basis that an expert report was being sought as to the circumstances of the Appellant and perhaps more importantly Ms S. I refused the application on the basis that my task was to decide whether or not the First-tier Tribunal Judge had materially erred in law and obtaining an expert report at this stage was irrelevant to this. It was only if I found

there to be material errors of law and then to go on and remake the decision in this case that new evidence would become relevant.

8. Mr Mian then confirmed that he relied on all the grounds of appeal. He submitted that the judge had erred in respect of the emergency travel document issued to Ms S by unduly speculating as to why this had occurred, with reference to para. 56 of the decision. The judge had also erred in respect of para. 65, in which she had stated that Ms S could pronounce talaq in Pakistan and thereby divorce her husband. It was only men who could use this particular procedure.
9. The evidence of the lawyer had not been adequately considered by the judge, with reference to paras. 58 and 61. The lawyer had confirmed that Ms S had been unable to pursue proceedings to divorce her husband. In summary, Mr Mian submitted that the judge had been wrong to conclude that there were no insurmountable obstacles to the Appellant and his partner living together in Pakistan.
10. Ms Cunha accepted that the judge had erred in respect of the talaq issue, but she submitted that this was not material because having considered the evidence as a whole the judge had properly concluded that it would have been open to Ms S to have undertaken divorce proceedings in any event as provision existed under Pakistani law.
11. She submitted that a number of the challenges to the judge's decision were in reality nothing more than disagreements. It was clear that the judge had taken all relevant evidence into account. The adverse credibility findings made by the judge had been open to her.

### **Decision on error of law**

12. I conclude that there are no material errors of law in the judge's decision.
13. As a general observation, it is clear to me that the judge has given very careful consideration to the appeal before her and her findings of fact and reasons are numerous and detailed. By way of a more detailed analysis, I will take relevant aspects of the grounds of appeal in turn.
14. With reference to paras. 5 and 6 of the grounds, it is the case that the Respondent had been directed to obtain evidence from the British Consulate in Karachi as regards the issuance of an emergency travel document to Ms S. The Respondent had in fact complied with those directions, although the information provided was fairly thin, it being said that there was no "documentary evidence" from the British authorities in Karachi to confirm that the document had been issued in the circumstances asserted by Ms S.
15. In my view the judge was entitled to proceed on the evidence that was before her. No expert evidence had been adduced by the Appellant and

no adjournment of the hearing before the judge had been sought for any such evidence to have been obtained, or indeed for the Respondent to have provided better particulars as to the issuance of the document in question. Although Mr Mian has submitted that the judge impermissibly speculated as to why the document might have been issued by the British authorities in Pakistan, she was in fact doing nothing more than considering the evidence that was before her in light of the undisputed fact that the burden of proof rested with the Appellant. Put simply, the judge did not believe the evidence put forward to her. There is no error in respect of this issue.

16. In respect of para. 7 of the grounds, in my view there is no contradiction between paras. 32 and 34 of the judge's decision whatsoever. Indeed, the judge was doing nothing more than setting out accepted facts in respect of Ms S's marriage to her husband and the Respondent's acceptance that that relationship had broken down permanently. There is no error here.
17. In respect of paras. 8 and 9, this is nothing more than a disagreement with the judge's assessment of the evidence as a whole and findings of fact that were clearly open to her.
18. In respect of para. 11 and the flight tickets, it has not been entirely easy to determine either what the judge said about the evidence or indeed about the nature of the challenge made in respect of that finding. Having reflected on this point, I would agree with what Judge Ford said at para. 2.b of the grant of permission. The judge was concerned with the timing of the booking, not that there was no return flight at all. In any event, even if the judge had erred in some way this is clearly immaterial when the decision is viewed as a whole.
19. Moving onto para. 13 of the grounds and para. 65 of the judge's decision, this had given me some cause for concern because it is undoubtedly the case that the judge erred in finding that women were able to use the talaq procedure in order to divorce a husband. In fact, it is only men who are able to pursue this route. However, the error is immaterial when one reads the judge's decision as a whole. It is quite clear from the full consideration given both to the lawyer's letter and the evidence from Ms S herself (see paras. 57-61) that the judge did not find much of the evidence before her to be credible and was of the view that Ms S would be able to pursue divorce proceedings of one sort or another even if (contrary to her understanding as set out in para. 65) talaq was not one of those possibilities. Further, it is uncontroversial that there is provision under Pakistani law for women to divorce their husbands. There was clearly no evidence from the Appellant before the judge to show that Ms S would simply not be able to divorce her husband through any legitimate route.
20. Para. 14 of the grounds criticises the judge's findings in paras. 58 and 59 of her decision. However, as I have already mentioned, it is clear to me that the judge gave full consideration not simply to the lawyer's letter but to the evidence as a whole, including, importantly, the oral evidence given

at the hearing. The attack in para. 14 of the grounds ignores what the judge has said in paras. 59 and 60 of her decision.

21. That deals with the specific points raised in the grounds. I would add some further observations. A number of the adverse findings made by the judge have not been the subject of any challenge. It is quite clear not only that the judge correctly directed herself to the relevant legal framework, but that she has addressed the relevant questions with care and has not simply restricted herself to the issue of Ms S's marriage. Paras. 66-71 of the decision show that she applied her mind to other potentially relevant factors such as Ms S's health and the couple's cultural and social ties with Pakistan.
22. The judge also went on to consider whether or not any exceptional circumstances existed in this particular case. The findings and conclusions are comprehensive and when the decision is viewed holistically, the judge's consideration is entirely sound.
23. In light of the above, the Appellant's appeal to the Upper Tribunal is dismissed and the decision of the First-tier Tribunal stands.

### **Anonymity**

24. I make no anonymity direction in this case.

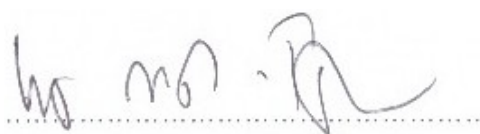
### **Notice of Decision**

**The decision of the First-tier Tribunal does not contain material errors of law.**

**That decision shall stand.**

**The Appellant's appeal to the Upper Tribunal is dismissed.**

Signed



Date: 27 June 2019

Upper Tribunal Judge Norton-Taylor

