IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004144

First-tier Tribunal Nos: HU/57918/2023
LH/01037/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26th of March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. A. Jones, Counsel instructed by Shams Williams Solicitors
For the Respondent: Mr. T. Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 12 March 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a decision issued on 7 December 2023 I set aside the decision of the First-tier Tribunal. The decision came before me to be remade.

The hearing

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2. I heard oral evidence from the appellant and his partner. Both representatives made oral submissions. I reserved my decision.

3. I have taken into account the documents in the consolidated bundle produced for the remaking (595 pages). Mr. Lindsay had not received this bundle. It consists of four parts, A to D. The only part which contained new material which had not been previously considered by the respondent is Part B. Mr. Lindsay confirmed that he had all of the documents from the hearing in the First-tier Tribunal. I gave him time to consider the documents in Part B. When the hearing started he confirmed that he had had sufficient time to consider these documents and made no request for an adjournment.

4. At the outset of the hearing I established that the issues before me were whether paragraph EX.1(b) applied to the appellant, and whether the decision was otherwise a breach of his rights, or those of the sponsor, to a family and private life under Article 8 ECHR. Mr. Lindsay agreed with this. However, in his cross-examination he asked questions which he said went to the issue of whether the appellant and sponsor had been and were cohabiting. Miss. Jones questioned this line of cross-examination given that the respondent had accepted that the appellant and sponsor were in a genuine and subsisting relationship.

5. I stated that it did not appear to me, having accepted that the appellant and sponsor were in a genuine and subsisting relationship and that the application fell to be considered under paragraph EX.1(b), that the issue of cohabitation was relevant, in particular not to the issue of whether there were insurmountable obstacles to family life continuing in Pakistan. Mr. Lindsay submitted that his questions were relevant to the credibility of the appellant and the evidence relied on, and that if the appellant and sponsor were not cohabiting, this would call into question whether they were in a genuine and subsisting relationship. However, at the opening of his submissions he relied on the respondent's review, and stated that the first issue before me was whether there were insurmountable obstacles to family life continuing in Pakistan, which appeared to be an indication that he continued to accept that the relationship requirements were met.

6. I have carefully considered the documents before me. In the decision dated 16 October 2022 the respondent stated:

> "However, you did not provide sufficient documents to suggest that you are living with your unmarried partner in a subsisting and genuine relationship."

7. In the respondent's review, undated but uploaded to the system on 9 February 2023, the respondent stated:

> "Based on the evidence provided, the Respondent (R) accepts the Appellant (A) and the Sponsor (S) are in a genuine and subsisting relationship and meets the definition of partner under GEN.1.2(iv)."

8. The "evidence provided" was that in the appellant's bundle provided for the hearing in the First-tier Tribunal, which included evidence of cohabitation. The respondent accepted that the appellant met the definition of partner under GEN.1.2, and that therefore paragraph EX.1(b) fell to be considered. I find that, in order for the respondent to concede that the appellant and sponsor were in genuine and subsisting relationship and that the he met the definition of partner, the respondent must have been satisfied that they had been "living together in a

relationship similar to marriage or a civil partnership for at least two years" prior to the date of application, as this formed part of the definition of unmarried partner when the application was made. Had he not accepted this to be the case, he would not have conceded that the relationship requirements were met so that the application could be considered under paragraph EX.1(b). Mr. Lindsay submitted that it had not been accepted by the respondent that they had been cohabiting, but I find that this is not consistent with the concession made in the review, and not withdrawn either at the hearing in the First-tier Tribunal, nor at the error of law hearing, nor indeed by Mr. Lindsay before me.

Burden and standard of proof

9. The burden of proof lies on the appellant to show that the respondent's decision is a breach of his rights, and/or those of the sponsor, to a family and/or private life under Article 8 ECHR. The standard of proof is the balance of probabilities.

Decision and reasons

10. Taking into account my consideration at [4] to [6] above, I find that the respondent conceded that the relationship requirements were met such that the appeal fell to be considered under paragraph EX.1(b). The respondent did not accept that the appellant had shown that there were insurmountable obstacles to family life continuing in Pakistan. Paragraph EX.2 provides:

> "For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

11. Mr. Lindsay submitted that, if I were to find that the appellant and sponsor were still living together, he did not resist the conclusion that they were in a relationship and partners for the purposes of paragraph EX.1(b). He continued to submit that the respondent had not accepted that they had been cohabiting, but I find that this is contradicted by the concession made in the review that the relationship requirements were met. I take the concession at face value and I find that the respondent accepted that the appellant and sponsor were cohabiting such that he met the relationship requirements. The application was made in October 2021, so the respondent has accepted that the appellant and sponsor were living together since October 2019.

12. I find, for the avoidance of doubt, that the appellant and sponsor continue to live together and that they are in a genuine and subsisting relationship. I have taken into account the evidence as a whole. In relation to the fact that the appellant is not registered for Council Tax purposes, I do not accept that the fact that he is not registered is a "strong indication" that he does not live with the sponsor, taking into account all of the evidence. It was suggested by Mr. Lindsay that the address was used as a postal or "care of" address. However in addition to the address of Collings Place being the address on his bank documents, it is also the address on the TV licensing letter (C76), his car registration certificate (C75) and his car insurance (C72). I find that he would not have these documents sent to a "care of" address. I find that the documentary evidence which is addressed to the appellant at Collings Place corroborates the evidence of the appellant and sponsor that he has been living there since he was released on immigration bail.

13. The sponsor said that the appellant had lived with her since he was released "from prison". The grant of immigration bail is at C20 and C21. It is dated 17 June 2019. The address to which he was bailed is Collings Place. The sponsor is named as a financial condition supporter in the sum of £2,000.

14. I attach little weight to the sponsor's inability to remember exactly when the appellant started living with her. She was consistent in oral evidence that he moved in with her when he came out of "prison". This was in June 2019. She has mental health problems for which she is prescribed fluoxetine and amitriptyline. She said that these made her forgetful. Mr. Linsday accepted that evidence had been provided of her continuing mental health difficulties. Further, I find that the respondent accepted that the evidence provided for the hearing in the First-tier Tribunal showed they had been living together since at least October 2019.

15. In relation to the document at C84, while I accept that it is odd for a letter of this nature to have the addition at the top starting "Helo", Mr. Lindsay expressly stated in submissions that he was not alleging fraud or the production of a false document. The document is dated 20 October 2022, pre-dating the respondent's acceptance that the appellant met the relationship requirements, so must have been considered previously by the respondent when no issue was raised with it. I do not accept that this means that doubt is cast on the reliability of all of the documents provided.

16. Taking all of the above into account, I find that the appellant and sponsor have been living together since June 2019 and continue to live together. I find that they are in a genuine and subsisting relationship.

17. I have considered whether the appellant has shown that there would be insurmountable obstacles to family life continuing in Pakistan. I have considered all factors cumulatively following the case of Lal [2019] EWCA Civ 1925. I find that the sponsor is a British citizen. Her only connection to Pakistan is the appellant. I find that she has lived in the United Kingdom for all of her life. Her family and her social networks are here.

18. I find that the sponsor's mother died when she was young. She and her sister were brought up by her grandparents. Her grandparents both died in 2022, after this application was made. I find that the sponsor has a particularly close relationship with her sister, given the circumstances of their upbringing. I further find that she has experienced the deaths of both of her grandparents, who raised her, within the last two years. I find that she regularly visits the graves of her mother and grandparents.

19. I find that the sponsor is employed in the United Kingdom. I find that she does not speak any of the languages spoken in Pakistan. I find that she would struggle to find employment in Pakistan given that she does not speak the language, and given that she is a woman.

20. The appellant's evidence is that he and the sponsor would not get any support from his family unless she were to convert to Islam. In his supplementary witness statement (B17) he stated that he had spoken to his parents about the sponsor but that they had attached conditions if he were to return to Pakistan with the sponsor. "They would expect [the sponsor] to follow the Islamic way of life and culture, and we would have to marry under Islamic law" [11]. He stated

the sponsor was "not willing to go and live in Pakistan as she will not only face language barriers but there will be expectations of her to convert to Islam which she is unwilling to do, she is free to wear, eat and drink what she wants in the UK." He said that she would "feel alienated and isolated".

21. The appellant said that if the sponsor did not convert to Islam, his family would not allow them in their lives and they would be destitute. "In the absence of my estranged family in Pakistan, I will not have any economic, social or family networks in Pakistan, nor do I own any land, assets or have any savings in Pakistan and as such I will have no access to accommodation, support or, employment and thus am not able to provide an income to sustain myself or my partner in Pakistan." [15]

22. The sponsor said in her statement at [9]:

> "It is a well known fact that women in Pakistan are disadvantaged in terms of status, gender, work, education and susceptibility to harassment. I will not be able to understand or speak the language and I would be unable and unwilling to follow strict Islamic traditions and culture-that would be expected of me in Pakistan."

23. She stated at [10] that she would be "isolated and alienated" if she had to move to Pakistan which would have a "negative impact and adverse effect on my mental health and wellbeing which will no doubt deteriorate".

24. At [13] she stated:

> "I would find it difficult to gain medical treatment as I would not be able to afford medical treatment as I would firstly have to find a job (I will have a language barrier and the fact that I am a women), I will not be earning, I will not have a home and I will be isolated as acceptance of my non Islamic values will be held against me and more seriously my health and wellbeing will further deteriorate in a country in which there is little or no constitution."

25. The sponsor's statement at [9] is corroborated by the respondent's own guidance. In the CPIN Pakistan: Women fearing gender-based violence, November 2022 it refers to how the "patriarchal attitudes and discriminatory stereotypes about women's roles and responsibilities" "maintain their subordination to men" [5.2.1]. It states at [5.2.2]:

> "A Thomson Reuters Foundation survey, dated 2018, consisting of 550 experts on women's issues, ranked Pakistan as the "… sixth most dangerous and fourth worst [country in the world for women] in terms of economic resources and discrimination as well as the risks women face from cultural, religious and traditional practices, including so-called honor killings. Pakistan ranked fifth on non-sexual violence, including domestic abuse.""

26. A set out in the decision of the First-tier Tribunal, the respondent did not dispute that "women in Pakistan are disadvantaged in terms of status, education and susceptibility to harassment." Taking this into account with the sponsor's vulnerability due to her mental health, and the part that these disadvantages would play in increasing her vulnerability, I find that this is a hardship that she would not be able to overcome.

27. Mr. Lindsay submitted that the appellant and sponsor would be able to marry in Pakistan without the sponsor converting to Islam, which would in turn enable the

sponsor to integrate. I do not find that either of these conclusions is made out, either that the sponsor would be able to marry without converting to Islam, nor that being married would enable her to integrate. Mr. Linsday submitted that it would be "surprising and unlikely" that she would have to convert to Islam given that there were people from a large number of ethnicities and religions in Pakistan. Miss. Jones referred to [2.5.2] of the CPIN on Christianity, submitting that the ability to marry across faiths was limited. She did not provide a copy. The most recent CPIN for Pakistan on Christians and Christian Converts dated February 2021 does not say this at [2.5.2]. What it does state in Annex A, page 54 is that "A Christian woman or man marrying a Muslim is permissible, on the basis that they will convert to Islam". This appears to indicate that the sponsor would have to convert.

28. Even if Mr. Lindsay were correct and the sponsor could marry the appellant without converting to Islam, this would not mean that she would able to integrate. She does not speak the language. She has no experience of the culture in Pakistan. Being married would not remove the disadvantages in terms of status, education and susceptibility to harassment on account of being a woman. Further, the appellant's family would not support them unless she converted to Islam. I find that marriage would not overcome the difficulties which the sponsor would face when trying to integrate.

29. I find that, were the sponsor to move to Pakistan she would lose her family and social network in the United Kingdom. I find that she would also lose her career. She has never been to Pakistan, let alone lived there. I find that she would not be able to pursue her economic life in Pakistan. She would find it hard to adjust to life in Pakistan given the restrictions placed on women, and the discrimination that she would encounter.

30. I find that the sponsor's mental health would be likely to deteriorate in a situation where she was isolated on account of her inability to integrate. Mr. Lindsay submitted that she was not receiving any other treatment apart from medication, and that this was available in Pakistan. However, she would still need to access services in Pakistan, which would be difficult due to the language barrier and the need to pay. Were her mental health to deteriorate, given the language barrier, she would not be able to access other therapies as she could do in the United Kingdom. She would be more vulnerable on account of her poor mental health.

31. I find, taking into account all of the above, and mindful of the case of Lal and the need to consider the cumulative impact of the sponsor's circumstances, that the appellant has shown that paragraph EX.1(b) applies. I find that the appellant has shown that there would be insurmountable obstacles to family life continuing in Pakistan.

32. I have considered the appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. The respondent accepted that the appellant and sponsor were in a genuine and subsisting relationship. I find that they have a family life sufficient to engage the operation of Article 8. I find that the decision would interfere with this family life.

33. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the

individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

34. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that paragraph EX.1(b) of Appendix FM to the immigration rules applies. There will be no compromise to effective immigration control by allowing his appeal.

35. Following TZ (Pakistan) [2018] EWCA Civ 1109, I find that the appellant's appeal falls to be allowed. This case states at [34]:-

> "That has the benefit that 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 for that person to be removed."

36. In line with this, the headnote to OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 00065 (IAC) states:

> "(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied."

37. The appellant speaks English (section 117B(2)). He is not financially independent, but the sponsor is working full time and earns in excess of that required to sponsor a spouse (section 117B(3)). Although section 117B(4) provides that little weight should be given to a relationship established when a person has been here illegally, I find that the appellant meets the requirement of the immigration rules which provides that more weight is to be given to a relationship where there would be insurmountable obstacles to family life continuing outside the United Kingdom. Sections 117B(5) and (6) are not relevant.

38. In relation to Mr. Lindsay's submission that the appellant could return to Pakistan and make an application for entry clearance, I have found above that the appellant meets the requirements of the immigration rules and therefore, applying the caselaw of TZ and OA, the respondent's decision is not proportionate.

39. Taking all of the above into account, and attaching weight to the fact that the appellant meets the requirements of the immigration rules in relation to his

family life, I find that the Appellant has shown that the decision is a breach of his right, and that of the sponsor, to a family life under Article 8.

Notice of Decision

40. The appeal is allowed on human rights grounds, Article 8. The appellant meets the requirements of paragraph EX.1(b) of the immigration rules.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
19 March 2024