



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

Appeal Number: IA/09058/2014

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 15<sup>th</sup> July 2014**

**Determination**

**Promulgated**

**On 25<sup>th</sup> July 2014**

**Before**

**UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

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

Appellant

**and**

**BADAR ABBAS**

Respondent

**Representation:**

For the Appellant: Miss R Petterson, Home Office Presenting Officer

For the Respondent: Miss S Riaz, Manchester Legal Services

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Kempton made on the papers at North Shields on 25<sup>th</sup> April 2014.

**Background**

2. The claimant was born on 5<sup>th</sup> March 1987 and is a national of Pakistan. He was last given leave to remain in the UK on 26<sup>th</sup> February 2013 until 26<sup>th</sup>

August 2015 on a discretionary basis, since he could not meet the requirements of the Rules, as the spouse of Anjum Sultana Khan.

3. On 5<sup>th</sup> February 2014 the Secretary of State received information from the claimant's spouse that the couple were no longer living together and a decision was made to curtail his leave to remain under Rule 323(2) and 284(vi) and to remove him from the UK.
4. The judge accepted that the claimant had no indication that his wife had written to the Home Office about his marriage and had received no documentation from the UKBA until the curtailment decision. The appeal was allowed with respect to Article 6 of the ECHR in order to allow the claimant the right to pursue matters relating to the divorce, including the supposed forging of his signature on divorce documents whilst in the UK.
5. It was, however, accepted that the parties no longer resided with each other as man and wife.
6. The Secretary of State sought permission to appeal on the grounds that the judge had erred in allowing the appeal under Article 6 of the ECHR and permission to appeal was granted on that basis by Judge Scott-Baker on 2<sup>nd</sup> June 2014.
7. Both parties agreed that the curtailment decision was unlawful in that, as the claimant had only discretionary leave, it could only have been curtailed under Section 3(3)(a) of the 1971 Immigration Act, and not under the Immigration Rules.
8. Both agreed that the proper course was to remit this matter to the Secretary of State in order for her to make a lawful decision.

### **Decision**

9. The judge erred in law and the decision is set aside. The following decision is substituted. The appeal is allowed insofar as it is remitted to the Secretary of State.

Signed

Date

Upper Tribunal Judge Taylor