



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

Appeal Number: IA/26872/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 29<sup>th</sup> May 2014**

**Determination**

**Promulgated**

**On 13<sup>th</sup> June 2014**

**Before**

**UPPER TRIBUNAL JUDGE RENTON**

**Between**

**RAO MOHAMMAD ADNAM KHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Khan of Bukhari Chambers Solicitors

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Pakistan born on 14<sup>th</sup> December 1989. The Appellant first arrived in the UK on 12<sup>th</sup> March 2011 when he was given leave to enter as a Tier 4 (General) Student until 16<sup>th</sup> December 2012. On 13<sup>th</sup> December 2012 he applied for leave to remain on human

rights grounds having married a British citizen, Nicole Khan, on 15<sup>th</sup> December 2012. That application was refused for the reasons given in a Notice of Decision dated 11<sup>th</sup> June 2013. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Blake (the Judge) sitting at Taylor House on 13<sup>th</sup> January 2014. He decided to dismiss the appeal under the Immigration Rules but to allow it under Article 8 ECHR for the reasons given in his Determination dated 24<sup>th</sup> January 2014. The Respondent sought leave to appeal the Article 8 ECHR decision, and such permission was granted on 4<sup>th</sup> April 2014.

### **Error of Law**

2. I must first decide if the impugned decision of the Judge contained an error on a point of law so that it should be set aside.
3. According to what he wrote in his Determination, the Judge allowed the appeal on Article 8 ECHR grounds because he found the Appellant and his wife to be honest and credible witnesses and accepted that they had a genuine and subsisting relationship. Indeed, they were devoted to one another. The Judge considered the decision in **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC)** and found that there were good grounds to grant leave outside the Immigration Rules and therefore to consider whether there were compelling circumstances not sufficiently recognised under those Rules. One of the reasons for that decision was that there was evidence that the Appellant's wife was being investigated for a lymphoma. The Judge then assessed whether the decision of the Respondent was proportionate applying the format given in **Razgar v SSHD [2004] UKHL 27**. The Judge found that the Appellant had a family life with his wife which would be interfered with by the Respondent's decision to such a degree of gravity as to engage the Appellant's Article 8 rights. The Judge then carried out the balancing exercise necessary for any assessment of proportionality and decided that the Respondent's decision was not proportionate. In this connection, the Judge found that it was unlikely that in the future the Appellant would be able to meet the maintenance requirements of Appendix FM in order to return to the UK, and that it was unreasonable to expect the Appellant's wife to accompany him to Pakistan. The Appellant's wife suffered from a form of polycystic ovaries which had a debilitating effect upon her and for which it was unlikely she would receive the appropriate medical treatment in Pakistan. The Appellant's wife did not speak any of the languages spoken in Pakistan, and more to the point, she was a practising Christian. The Judge was satisfied that the Appellant and his wife would have problems in an Islamic State because the Appellant and his wife had not undergone any sort of Islamic marriage ceremony, and they had married without any conversion to Islam by the Appellant's wife. The Judge found these factors to amount to insurmountable obstacles to the Appellant's return to Pakistan.
4. At the hearing, Ms Pal referred to the grounds of application and argued that in reaching his decision the Judge had erred in law in reaching his

decision that there were insurmountable obstacles to the Appellant's wife returning to Pakistan with him. The Judge had set out the correct test at paragraph 92 of the Determination, but had not applied it. He had made no findings in respect of compassionate circumstances. The Judge had failed to consider the public interest when assessing proportionality and had failed to take into account the fact that the Immigration Rules amounted to a complete code.

5. In response, Mr Khan submitted that there had been no error of law. The Judge had given a detailed judgment in which he had considered all the relevant circumstances, and had properly applied the law. At paragraph 93 of the Determination, the Judge had found practical difficulties amounting to insurmountable obstacles to the Sponsor living with the Appellant in Pakistan. The Judge was entitled to find upon the evidence that there were exceptional circumstances outside of the Immigration Rules.
6. I found that there was no error of law in the decision of the Judge so that it should be set aside. My reasons for that decision are as follows. The Judge came to a conclusion open to him upon the evidence before him and which he fully explained. The Judge was fully aware of the fact that the Appellant could not satisfy the requirement of the Immigration Rules, hence his decision to take as his starting point the decision in **Gulshan**. It follows that the Judge attached the appropriate weight to the public interest when later assessing proportionality.
7. The Judge followed **Gulshan** in finding at paragraph 92 of the Determination that in this case there were arguably good grounds for granting leave to remain outside the Immigration Rules. The Judge then considered whether there were any compassionate circumstances in this case not recognised by those Rules. He made such a finding at paragraph 98 of the Determination when he decided that there were insurmountable obstacles to the Appellant's wife accompanying him to Pakistan. The Judge's decision in this respect was fully reasoned in that paragraph. There was no misdirection in law as to the interpretation to be given to the term "insurmountable obstacles". The Judge had referred to the law in this respect correctly at paragraph 93 of the Determination, and it was open to him to find that the practical difficulties in the Sponsor relocating as described in paragraph 98 of the Determination amounted to insurmountable obstacles.
8. To summarise, I find that there was no error of law in respect of the Judge's decision relating to Article 8 ECHR.

### **Decision**

9. The making of the decision of the First-tier Tribunal under the Immigration Rules and under Article 8 ECHR did not involve the making of an error on a point of law.

10. I do not set aside the decision.

**Anonymity**

The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I find no reason to make one.

Signed

Date

Upper Tribunal Judge Renton