



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

**Appeal  
Number**

**IA/39797/2013**

**THE IMMIGRATION ACTS**

**Heard at Field House  
(via video link to Bradford) Determination  
On 28 May 2014 August 2014 promulgated  
On 12**

**Before**

**Deputy Judge of the Upper Tribunal I. A. Lewis**

**Between**

**Muhammad Saleem  
(Anonymity direction not made)**

**Appellant**

**and**

**Secretary of State for the Home Department  
Respondent**

**Representation**

For the Appellant: Mr. M. Shah of Maz Shah Legal.  
For the Respondent: Ms. R. Petterson, Home Office  
Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Hindson promulgated on 20 February 2014, dismissing the Appellant's appeal against the Respondent's decision dated 13 September 2013 to refuse to vary leave to remain and to remove him from the UK.

## **Background**

2. The Appellant is a national of Pakistan born on 6 September 1982. The Appellant entered the UK on 4 March 2013, pursuant to a visitor visa conferring leave until 14 July 2013. During the brief period of the Appellant's visit he met Ms Krissy Ellam and formed a relationship, moving in with her on 11 May 2013 (determination at paragraph 11); it is said that he has formed a close relationship with Ms Ellam's three children (paragraph 11). Although it is said it had initially been the Appellant's intention to return to Pakistan after 4 weeks, where he has immediate family and his own mobile phone business (paragraphs 13 and 14), the Appellant changed his mind and on 4 July 2013 he made an application for leave to remain on the basis of his new relationship.

3. The application was refused for reasons set out in a 'reasons for refusal letter' ('RFRL') dated 13 September 2013, and a Notice of Immigration Decision of the same date was served on 17 September 2013.

4. The Appellant appealed to the IAC. The First-tier Tribunal Judge dismissed the Appellant's appeal for reasons set out in his determination.

5. The Appellant sought permission to appeal which was granted by First-tier Tribunal Judge McDade on 25 March 2014.

6. The Respondent has filed a Rule 24 response dated 25 April 2014 resisting the appeal.

## **Consideration**

7. I have considered carefully the grounds of appeal submitted in support of the application for permission to appeal, and the oral submissions of Mr Shah (which essentially sought to rely upon and amplify those grounds), but I find that I am unable to identify any error of law on the part of the First-tier Tribunal Judge.

8. Plainly the Appellant could not succeed under the Immigration Rules. Paragraph E-LTRP.2.1.(a) prevents a visitor from applying for leave to remain as a partner. The Appellant otherwise did not satisfy

any of the qualifying periods under paragraph 276ADE(iii)-(v), and did not satisfy 276ADE(vi) in circumstances where he acknowledged that he retained both family and business ties with Pakistan.

9. This was acknowledged by the Appellant's representative before the First-tier Tribunal, and accordingly reliance was placed on human rights grounds (including reference to section 55 of the Borders, Citizenship and Immigration Act 2009): see determination at paragraph 3. In my judgement it is abundantly clear that the Judge was well aware of the scope of the appeal and the basis of the Appellant's case - both by reference to this paragraph and the matters set out at paragraphs 9-16 of the determination.

10. The Judge accepted that the Appellant was in a genuine and subsisting relationship with Ms Ellam, and that they had cohabited since May 2013 (paragraphs 17 and 18); it was also accepted that family life existed between the Appellant, his partner, and her children (paragraph 23). The Judge entertained and rejected an argument advanced on behalf of the Appellant in respect of the fourth **Razgar** question (paragraphs 19-21). In the circumstances the Judge focused on the question of proportionality (paragraph 22).

11. The Judge accepted a core element of the Appellant's case: that it would not be reasonable to expect the Appellant's partner to relocate to Pakistan (paragraph 25). In this context the Judge also found that it was in the best interests of the children for them to remain in the UK with their mother (paragraph 25).

12. At paragraph 26 the Judge said this: *"The appellant could return to Pakistan with little difficulty. He has a home there and a source of income. It would be open to him to make a settlement application from Pakistan. The couple could continue their relationship by way of visits to each other and contact by telephone and other electronic means. I accept, however, that this is not the same as the relationship that they currently enjoy."* In my judgement this is a clear finding, and recognition of, there being an interference in the mutual private/family lives by reason of the Respondent's decision even if the Appellant were to quit the UK on a temporary basis to seek re-admittance as a partner.

13. However, it is clear from paragraph 27 that the Judge determined that such an interference was proportionate in all of the particular circumstances of this case. The Judge made it plain that he was aware of the principles in **Chikwamba**, but that he

considered the Appellant's case did not warrant an exception being made to the usual expectation of the Rules that a person present in the UK as a visitor will not be granted leave to remain as a partner. The Judge expressly found that there would be "*little hardship to the Appellant returning to Pakistan*". In this context it is also to be noted that at paragraph 27 the Judge stated in terms that he had "*taken the interests of the children as a primary consideration*".

14. I am unable to detect anything wrong in law in the approach taken by the Judge, and I am unable to identify anything that is unsustainable in his fact finding and reasoning. The proportionality balance was essentially a matter for the evaluation of the Judge, and is not to be interfered with in the absence of any error of law or perversity in performing that exercise.

15. In my judgement the challenge mounted by the Appellant is essentially based on a simple disagreement with the outcome. Although the grounds in support of the application for permission to appeal seek to argue that the Judge failed to consider proportionality (Grounds at paragraph 6), that is quite simply not the case. Further, the grounds are misconceived in submitting that the Judge failed to have due and proper regard for the rights of the children (paragraph 15): the Judge essentially accepted the Appellant's case that it was not in the best interests of the children to relocate to Pakistan, and took this forward as a primary consideration in assessing whether it was proportionate for the Appellant to quit the UK, leaving his partner and her children behind. Paragraph 16 of the Grounds is wrongly premised in that it posits a situation of relocation of the children to Pakistan when that was not the premise of the Judge's decision. The grounds otherwise seek to argue that it would be a breach of European Union law to separate the Appellant from his partner's children (paragraphs 10-14). In my judgement this is misconceived in circumstances where the Appellant is not their father and does not exercise parental rights in respect of the children.

16. The Judge essentially concluded that there was nothing exceptional or compelling about the Appellant's case such that his removal would result in undue hardship. The Judge was satisfied that the Appellant's removal in consequence of the Respondent's decision was proportionate to the legitimate public end of maintaining a fair and coherent system of immigration control. I have little doubt that this was the correct answer: there were no compelling circumstances not sufficiently recognised under the Rules to allow the appeal by reference to the ECHR.

17. In all such circumstances I find no error of law in the decision of the First-tier Tribunal Judge. Accordingly, the decision under the Immigration Rules and under the ECHR is to stand.

**Decision**

18. The decision of the First-tier Tribunal Judge contained no error of law and stands.

19. The appeal is dismissed.

**Deputy Judge of the Upper Tribunal I. A. Lewis 12 August  
2014**