



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

**Appeal Number: IA/21142/2014**

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 18 September 2015**

**Decision and Reasons Promulgated  
On 28 September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BIRRELL**

**Between**

**HABIB UR REHMAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Iqbal of Equity Law Chambers

For the Respondent: Ms C Johnstone Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Gladstone promulgated on 28 August 2015 dismissing the Appellant's appeal

against a decision of the Respondent dated 24 April 2014 to refuse to grant leave to remain as the spouse of a person settled in the United Kingdom.

### Background

3. The Appellant was born on 1 January 1985 and is a national of Pakistan.
4. The Appellant entered the United Kingdom on 16 December 2011 as the spouse of Razeena Kazim a British Citizen with leave valid until 28 February 2014. On 20 February 2014 the Appellant applied for further leave to remain in order to obtain the relevant qualifications to meet the Knowledge of Language and Life in the UK (KOLL) requirements for indefinite leave to remain.
5. On 24 April 2015 the Secretary of State refused the Appellant's application by reference to paragraph 284, Appendix FM and paragraph 276ADE of the Immigration Rules and found there was no reason to grant leave outside the Rules. The refusal letter gave a number of reasons:
  - (a) The Appellant did not provide an English Language in speaking and listening from an English language test provider approved by the Secretary of State which showed that the Appellant met the level of A1 of the common European Framework of Reference.
  - (b) The certificate produced by the Appellant from EMD is not from an approved provider as set out in Appendix O of the Rules.
  - (c) In considering EX.1 of Appendix FM there were no insurmountable obstacles as to why the Appellant and his wife could not continue family life in Pakistan.
  - (d) The Appellant did not meet the private life requirements of paragraph 276ADE.
  - (e) There were no circumstances that warranted a grant of leave outside the Rules.

### The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal on the basis that the Respondent had erroneously applied paragraph 284 to the application which should have been considered under R-LTRP of Appendix FM and his language certificate submitted with his initial application should have been accepted and there were insurmountable obstacles to family life being pursued in Pakistan.
7. First-tier Tribunal Judge Gladstone ("the Judge") dismissed the appeal against the Respondent's decision. The Judge found :
  - (a) The Judge was satisfied that paragraph 284 was properly applied and set out her reasoning in relation to that issue.

- (b) The Appellant was required to provide a language certificate from an approved test provider and had not done so and therefore the application was properly refused under paragraph 284(ix).
  - (c) While the Appellant claimed to have sat another language test there was no evidence of the result or that it was with an approved test provider.
  - (d) The Appellant did not meet the private life requirements of paragraph 276ADE of the Rules.
  - (e) The Judge considered EX.1 and EX.2 of Appendix FM.
  - (f) The Judge found that his claim before her that he was not close to his family in Pakistan because he spent long periods away from home at school and college was contradicted by the leave application which stated that he had family ties in Pakistan and the evidence submitted in support of his appeal in 2011 in which it was claimed that he worked in the family business as an agriculturalist.
  - (g) The Judge found that the Appellant and his wife could therefore live and work with his family on return.
  - (h) The Sponsor had the relevant language abilities to live in Pakistan and had visited there.
  - (i) There was little evidence of any claimed medical problems suffered by the sponsor and therefore the Judge could not make findings as to whether or not there would be difficulties in Pakistan. She noted that the sponsor was not incapacitated as she was in employment.
  - (j) The Judge found there were no insurmountable obstacles to family life continuing in Pakistan.
  - (k) The Judge found that alternatively the Appellant could return to Pakistan and take the language test and re apply for entry clearance and this was not a disproportionate interference with his rights under Article 8.
8. Grounds of appeal were lodged and on 18 November 2014 First tier Tribunal Judge Chohan refused permission. The application was renewed arguing that the Judge should have applied the evidential flexibility provisions to the English Language certificate requirement; that her assessment of proportionality was flawed; that the Judge failed to take into account material facts about the sponsor's health. Deputy Upper Tribunal Judge Chapman granted permission on the basis of the renewed grounds and the issue of procedural fairness raised in the original grounds on the

basis that the Judge may have misunderstood submissions made by the Appellant's former legal representative.

9. At the hearing I heard submissions from Mr Iqbal on behalf of the Appellant that (a) He conceded that paragraph 284 of the Rules had been properly applied.

(b) He pursued two arguments: that the hearing had been procedurally unfair and that the Judges assessment under Article 8 had been flawed.

(c) In relation to the issue of procedural unfairness the Appellant had been confused about the language requirements in his application for further leave.

(d) The Appellant's representative before the Judge had been legally qualified as otherwise he was committing a criminal offence.

(e) What was unclear was the manner in which the Judge considered the representatives submissions in relation to the Sponsors income from employment in the proportionality assessment.

(f) In relation to the Judges assessment under Article 8 the Judge failed to take into account the Sponsors medical issues that would prevent her from living in Pakistan.

(g) The financial requirements of the Rules were too onerous.

(h) He conceded that the decision was 'fairly reasonable' but there were factors relating to the medical history of the sponsor and the financial requirements of the Rules that merited further consideration.

10. On behalf of the Respondent Ms Johnstone submitted that :

(a) The Appellant's representatives had in respect of the application being appealed submitted a covering letter conceding that the Appellant could not meet the requirements of the Rules.

(b) The Judge gave ample opportunity to the solicitor to address the court and considered the bundle of documents.

- (c) Any suggestion that the Judge interrupted the witnesses when they gave evidence had not been raised previously and had not been the subject of the permission.
- (d) In relation to Article 8 the Judge considered all of the relevant factors.
- (e) The Judge at paragraph 99 set out her consideration of the medical evidence. There was also evidence before her that the sponsor had been to Pakistan at a time she claimed to be too ill to travel.
- (f) The Judge did not make findings as to whether the parties could meet the financial requirements as there was no evidence in acceptable form that they could.

### **Legal Framework**

- 11. In relation to claims under Article 8 these are addressed by Appendix FM and paragraph 276ADE of the Rules and the Secretary of State's Guidance. If an applicant does not meet the criteria set out in the Rules then guidance issued by the Secretary of State in the form of instructions provides in effect, that leave to remain outside the rules could be granted in the exercise of residual discretion in 'exceptional circumstances' which are defined in the guidance and must be exercised on the basis of Article 8 considerations, in particular assessing all relevant factors in determining whether a decision is proportionate under Article 8.2.
- 12. It is now generally accepted that the new IRs do not provide in advance for every nuance in the application of Article 8 in individual cases. At para 30 of Nagre, Sales J said:

*"30. ... if, after the process of applying the new rules and finding that the claim for leave to remain under them fails, the relevant official or tribunal judge considers it is clear that the consideration under the Rules has fully addressed any family life or private life issues arising under Article 8, it would be sufficient simply to say that; they would not have to go on, in addition, to consider the case separately from the Rules. If there is no arguable case that there may be good grounds for granting leave to remain outside the Rules by reference to Article 8, there would be no point in introducing full separate*

*consideration of Article 8 again after having reached a decision on application of the Rules.”*

13. This was also endorsed by the Court of Appeal in Singh and Khalid where Underhill LJ said (at para 64):

“64. ... there is no need to conduct a full separate examination of article 8 outside the Rules where, in the circumstances of a particular case, all the issues have been addressed in the consideration under the Rules.”

14. More recently the Court of Appeal in SS Congo [2015] EWCA Civ 387 stated in paragraph 33:

*“In our judgment, even though a test of exceptionality does not apply in every case falling within the scope of Appendix FM, it is accurate to say that the general position outside the sorts of special contexts referred to above is that compelling circumstances would need to be identified to support a claim for grant of LTR outside the new Rules in Appendix FM. In our view, that is a formulation which is not as strict as a test of exceptionality or a requirement of “very compelling reasons” (as referred to in MF (Nigeria) in the context of the Rules applicable to foreign criminals), but which gives appropriate weight to the focused consideration of public interest factors as finds expression in the Secretary of State’s formulation of the new Rules in Appendix FM. It also reflects the formulation in Nagre at para. [29], which has been tested and has survived scrutiny in this court: see, e.g., Haleemudeen at [44], per Beatson LJ. “*

### **Finding on Material Error**

11. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
12. This was an application by the Appellant for further leave to remain as the spouse of a British Citizen which was refused by reference to paragraph 284 of the Rules and Appendix FM and paragraph 276ADE. No basis was found to grant leave outside the Rules.
13. The first challenge to the Judges decision is one of procedural unfairness in that it is suggested that the Judge may have misunderstood submissions made by the Appellant’s representative at that time who was Mr Adissianya of Verax Solicitors. It is clear from the bundle and he signed s84 Form before me that Mr Adisianya was qualified to appear before the Tribunal indeed he appears to have had the same

qualification as Mr Iqbal. This of course does not signify that he would be the most able advocate to appear before the courts but that is not a requirement of fairness: in the same way that it is always possible for decisions to be better written it is always possible to find a more competent representative, one who is a more persuasive advocate or one who is better able to explain the legal requirements of the Rules or caselaw.

14. It is evident from reading the Judges detailed account of the hearing that in the absence of a Home Office Presenting Officer and in the light of the late submission of additional documents and a skeleton argument the Judge endeavoured to narrow the issues that were of relevance in the case seeking to clarify with Mr Adisianyia why he advanced arguments at length in both his skeleton argument and before her that paragraph 284 did not apply in this case. The Judge noted at paragraph 68 that she found his final submissions difficult to follow on this issue and 'requested him to try to collect his thoughts so I could understand.' Given that it is now conceded that the arguments advanced by Mr Adisianyia in relation to paragraph 284 were entirely without merit it is perhaps not surprising that the Judge found them 'hard to follow.' I am satisfied that the Appellant through his representative was given a fair opportunity to advance his case and the fact that unmeritorious arguments were advanced in did not make the proceedings unfair.
15. The grounds did not suggest that the Judges assessment under EX.1 and 2 of Appendix FM was flawed and therefore it is accepted that there were no insurmountable obstacles to family life being enjoyed in Pakistan. Given therefore that it was conceded that the only basis on which the Appellant could hope to succeed was under Article 8 outside the Rules I specifically asked Mr Iqbal to identify for me any compelling circumstances that Mr Adisianyia had failed to advance before the Judge that might suggest that his limited advocacy skills in some way amounted to procedural unfairness or suggested that the Article 8 assessment was flawed. I am satisfied that he was unable to do so and the argument was one solely as to weight which is a matter for the Judge.
16. The Judge's assessment under Article 8 is found at paragraphs 85 onwards and takes into account the Appellant's failure to meet the Rules that address Article 8 family and private life and I am satisfied that she has comprehensively and

accurately addressed every issue of relevance to the assessment of proportionality. Mr Iqbal suggests that the Judge gave insufficient weight to the Sponsors medical circumstances in that she claimed to have an eating disorder and sleep problems. The Judge made clear findings in relation to the sponsors medical needs on what she described as the 'very little evidence before me': in essence she had a GPs letter and a record of a telephone consultation. She had of course the oral evidence of the sponsor and Appellant but their evidence had to be assessed against the background of adverse credibility findings in relation to their account of their family relationships in Pakistan as there were a number of discrepancies. Given the limited nature of the medical evidence she was entitled to conclude that '*I cannot know whether or not there will be difficulties in Pakistan in relation to these.*'

17. In relation to the argument that the Judge failed to take into account that the financial requirements are 'too onerous' as advanced by Mr Iqbal this is an argument entirely without merit as the financial requirements have been upheld by the court in MM(Lebanon) and others 2014 EWCA Civ 985 where it was said that in setting the maintenance limits the Secretary of State had "discharged the burden of demonstrating that the interference was both the minimum necessary and strikes a fair balance between the interests of the groups concerned and the community in general. Individuals will have different views on what constitutes the minimum income requirements needed to accomplish the stated policy aims. In my judgment it is not the court's job to impose its own view unless, objectively judged, the levels chosen are to be characterised as irrational, or inherently unjust or inherently unfair. In my view they cannot be". Nor indeed was it an argument advanced by Mr Adisianyia as the Judge noted at paragraph 104 that :

*"it is not argued that this is a case that simply would be unable to succeed, which was a concern in MM before the High Court, and thus the sponsor need not leave her country of nationality, pending a further application under the Rules."*

18. I remind myself of what was said in Shizad (sufficiency of reasons: set aside) Afghanistan [2013] UKUT 85 (IAC) about the requirement for sufficient reasons to be given in a decision in headnote (1) : "*Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.*"



19. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and sufficiently detailed and based on cogent reasoning.

## **CONCLUSION**

**20. I therefore found that no errors of law have been established and that the Judge's determination should stand.**

## **DECISION**

**21. The appeal is dismissed.**

Signed

Date 27 9 2015

Deputy Upper Tribunal Judge Birrell