



IAC-AH-SC-V1

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

Appeal Number: OA/00876/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Birmingham
On 26th June 2015**

**Determination & Reasons Promulgated
On 10th July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR KAISER ALI KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, ISLAMABAD

Respondent

Representation:

For the Appellant: No legal representation
For the Respondent: Mr N Smart (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge O R Williams, promulgated on 22nd September 2014, following a hearing at Birmingham on 15th September 2014. In the determination, the judge allowed the appeal of Kaiser Ali Khan. The Respondent Secretary of State subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

2. The Appellant is a male, a citizen of Pakistan, who was born on 1st December 1990. He appeals against the refusal of entry clearance to join his wife, Yasmin Bibi Sabir, a person present and settled in the UK, the refusal being on account of his failure to meet the financial requirement test, such as to show a income of least £18,600 per annum, with an additional £2,400 for each child, from the Sponsor. The Sponsor has five children and has been married previously (see paragraph 13). There is no issue as to the genuineness of the marriage.

The Judge's Findings

3. The judge observed that "all the children are British citizens" and that the Appellant has parental responsibility for his late brother's children, "as he is married to the Sponsor" (see paragraph 16). Since the children were British citizens, they did not have to show an additional £2,400 income for each child. The judge dealt with the reasonableness of the children relocating with their mother to Pakistan. He applied Appendix EX.1 (see paragraphs 12 to 21) and concluded that "there would be insurmountable obstacles to family life with the partner continuing outside the United Kingdom" (paragraph 21).

Grounds of Application

4. The grounds of application state that the First-tier Tribunal Judge allowed the appeal under Appendix FM of the Immigration Rules. However, the Immigration Act 2014 inserted a paragraph EX.2 into Appendix FM which defines "insurmountable obstacles" to mean "very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK". The grounds state that the "judge has failed to direct himself to the new definition of insurmountable obstacles, and it is submitted that there would not be very significant difficulties which could not be overcome nor would there be very serious hardship".
5. On 10th December 2014, permission to appeal was granted.

Submissions

6. At the hearing before me on 26th June 2015, the Appellant was unrepresented. His wife, Yasmin Bibi Sabir, was in attendance together with Henna Bibi Sabir. Mr Smart, appearing on behalf of the Respondent Secretary of State, submitted that he would apply to have the appeal withdrawn. The reason was that paragraph EX.2 was introduced only by HS 532 for implementation on 28th June 2014, and at the date of the decision by the Entry Clearance Officer on 17th December 2013, these new Rules had no application whatsoever.
7. I have considered Appendix FM, and EX.2, which reads that, "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". It is clear that this provision,

introduced by HC 532, and ordered by the House of Commons to be printed on 10th July 2014, had no application at the date of the decision by the Entry Clearance Officer, or the date of the decision by the judge. Accordingly, permission to withdraw this appeal is hereby given. There is no effective appeal before me.

8. Accordingly, there is no material error of law in the original judge's decision. The appeal is withdrawn, and the decision of First-tier Tribunal Judge O R Williams stands. This means that entry clearance should forthwith be granted by the post at Islamabad to the Appellant, Mr Qaiser Ali Khan.
9. This decision is to be sent to the Sponsor's address at 28 Braithwaite Road, Sparkbrook, Birmingham, B11 ILA, and not to the immigration consultants in Islamabad.
10. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

9th July 2015