Upper Tier Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03363/2013

THE IMMIGRATION ACTS

Heard at Birmingham
On 19 December 2014

Determination Promulgated
On 6 January 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Jabran Muhammad
[No anonymity direction made]

Appellant

and

The Entry Clearance Officer Islamabad

Respondent

Representation:

For the appellant: Mr A Pipe, instructed by Khan & Co
For the respondent: Mr N Smart, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Jabran Muhammad, date of birth 3.5.83, is a citizen of Pakistan.

2. This is his appeal against the determination of First-tier Tribunal Judge Nixon promulgated 12.3.14, dismissing his appeal against the decision of the respondent, dated 21.12.12, to refuse his application made on 26.6.12 for entry clearance to the United Kingdom as a spouse, pursuant to paragraph 281 of the Immigration Rules. The Judge heard the appeal on 7.3.14.

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3. First-tier Tribunal Judge Woodcraft refused permission to appeal on 2.5.14. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Freeman granted permission to appeal on 29.7.14.

4. Thus the matter came before me on 19.12.14 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Nixon should be set aside.

6. The relevant background to the appeal can be briefly summarised as follows. The application made in June 2012 was based on the appellant's marriage in Pakistan on 10.6.10 to Shazia Khan, a British citizen now present in the UK. The appellant and the sponsor are related outside of marriage as cousins. They last saw each other in November 2011.

7. It is relevant to note that two previous applications had been refused and appeals dismissed, in 2007 and 2011, in which false representations had been made.

8. The application was refused on the basis that the Entry Clearance Officer was not satisfied that the appellant would be able to be adequate accommodated in the UK without recourse to public funds, as required by paragraph 281(iv). Of particular concern was that the appellant's spouse resided in a house at an address given (details withheld), address A, owned by her relative(s), but the housing costs were met by public funds. There was no evidence that the wife was registered at or occupying this property. At the time of the application she was living at a different address, (details withheld), address B, and there was no evidence that the other address would be adequate to accommodate the appellant.

9. Judge Nixon highlighted the inconsistent evidence in the appellant case. In particular, that the sponsor claimed she started living at address A in February 2013 and notified the council, so she could pay her share of the due council tax. She claimed to be unaware that Mrs Begum was claiming council tax credit for that address and said it was an error that the entire council tax bill was in the sponsor's name. Two different property reports had been produced, one listing Mrs Begum and Mr M Zaman as the owners, the other containing no reference to them. The judge disbelieved the sponsor's evidence, in particular as to alleged coincidence between a claimed weekly income of £217.52 and the second council tax instalment.

10. Judge Nixon concluded that the appellant had failed to demonstrate on the balance of probabilities that adequate accommodation was available and thus the appeal failed under the Immigration Rules. Judge Nixon went on to consider the appellant's and the sponsor's circumstances, including their young child, under article 8 ECHR, following the Razgar steps, but concluding that the decision was entirely proportionate.

11. In granting permission to appeal, Judge Freeman noted that the renewed grounds rely on PS (paragraph 320(11) discretion: care needed) [2010] UKUT 440. "Although

the appellant was represented before the judge, arguably she should have offered an adjournment where paragraph 320(11) was raised for the first time before her, so that the necessary 'aggravating circumstances' could be properly considered.

12. The reliance by the judge on paragraph 320(11) of the Immigration Rules at §6 of the decision was an additional ground for dismissing the appeal on immigration grounds, on the basis that there had been two previous attempts to deceive in the previous applications.

13. In PS, the Upper Tribunal panel held that in exercising discretion under paragraph 320(11) to refuse an application for entry clearance where the automatic prohibition is disapplied by virtue of 320(7C), "the decision maker must exercise great care in assessing the aggravating circumstances said to justify refusal and must have regard to the public interest in encouraging those unlawfully in the UK to leave and seek to regularise their status by an application for entry clearance." Paragraph 320(7B) provides a mandatory refusal where, inter alia, deception had been used in a previous application. 320(7C) disapplies that mandatory refusal in a spousal application under paragraph 281. However, 320(11) provides a discretionary refusal in circumstances, including using deception in an application for entry clearance, where there are aggravating circumstances. In setting out a non-exhaustive list of aggravating circumstances, the Guidance explains that all cases have to be considered on their merits.

14. In the present case, the Entry Clearance Officer did not rely on 320(11); it was raised for the first time by the respondent's representative at the appeal hearing. In consideration of the decision of the First-tier Tribunal, whilst it is clear that the judge took an adverse view of the credibility of the appellant and the sponsor, it is not clear that there was any careful consideration of the aggravating circumstances. It is also fair to point out that the appellant had little, if any, notice that this issue would be raised. It is not clear to me what an adjournment could have accomplished, since the facts of the two previous refusal decisions and subsequent appeals would have been well known to both appellant and sponsor. However, it was probably unfair to rely on this issue at such short notice. It follows that this part of the decision cannot stand. However, this is not determinative of the outcome of the appeal, as the judge reached the independent conclusion, referred to above, that the appeal failed on the accommodation requirements of paragraph 281.

15. Judge Freeman did not grant permission to appeal in relation to article 8 grounds, but in any event I agree entirely with the assessment of Judge Woodcraft when refusing permission to appeal that article 8 was correctly assessed, with the judge properly directing herself on the best interests of the child. I also agree that the grounds in relation to article 8 are no more than a disagreement with the decision of the First-tier Tribunal. I am satisfied that the decision in respect of article 8, as well as on immigration grounds, was entirely sustainable on the evidence and for which the judge has supplied cogent reasoning. In the circumstances I reject the submission that the article 8 assessment was flawed, as claimed in the grounds of application for permission to appeal.

Conclusion & Decision:

16. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.

Signed: Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed and thus there can be no fee award.

Signed: Date: 31 December 2014

Deputy Upper Tribunal Judge Pickup