



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

Appeal Number: IA/08665/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2016**

**Decision Promulgated
On 4 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MURTAZA KHAN
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Kandola (Presenting Officer)
For the Respondent: Mr Jafar (Lee Valley Solicitors)

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal to allow the appeal of Murtaza Khan, a citizen of Pakistan born 21 February 1990, originally brought against the decision 17 February 2015 to issue removal directions against him under section 10 of the Immigration and Asylum Act 1999.
2. He had applied for further leave to remain in November 2014 primarily on the basis of his relationship with Laila Aneesah Mehboob, a British citizen who had never been to Pakistan, who he married via a civil ceremony on 1 September 2013. The application was refused on two grounds: firstly

because based on information received from Educational Testing Service (ETS) identifying an English language test as invalid, the Home Office considered that he had used dishonesty in his application, and secondly because it was not accepted, bearing in mind that his character therefore disqualified him for consideration under Appendix FM, that there was a compelling case for departing from the Rules.

3. The First-tier Tribunal did not accept that the Secretary of State had discharged the burden of proof upon her to sustain the serious allegation made as to the Respondent's asserted dishonesty, taking the view that the ETS finding that his test results could not be authenticated fell far short of proof of deception. That conclusion brought the case back into the ambit of Appendix FM, but as he had not put forward the specified evidence to establish maintenance and accommodation, he could only qualify under the Ten Year route, which required that he establish the existence of insurmountable obstacles to life abroad.
4. The First-tier Tribunal found that he did make good such a case: whilst not accepting that Ms Mahboob was vulnerable because of her age or build, and questioning her closeness to her parents here, the combination of her stage of pregnancy, the desirability of having antenatal healthcare, her lack of familiarity with Pakistan and inability to speak the language, together demonstrated that there were insurmountable obstacles to relocation.
5. The Secretary of State challenged both findings of the First-tier Tribunal, as to character and circumstances abroad, and permission to appeal was granted, solely on the latter point, because there was no express reference to requirement Ex.2 of Appendix FM in the decision below.
6. Before me Mr Kandola made brief submissions arguing that the decision was perverse; I did not need to call on Mr Jafar.

Findings and reasons

7. As the Appellant lacks immigration status the couple must satisfy the exception within Appendix FM at Ex.1 and Ex.2. The latter states:

“EX.2. 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.”
8. The First-tier Tribunal gave detailed reasons for its conclusions. Having expressly found that certain features of her case (her relationship with her own parents, her youth and fragile build) were not themselves enough to cross the threshold of inconvenience into insurmountability, it then found that certain specific obstacles were indeed sufficiently serious to do so: ie her stage of pregnancy and her lack of familiarity with life in Pakistan.

9. It is true that those conclusions were concisely expressed. However, reading the decision as a whole, it represents a very clear and balanced assessment of the Appellant's case, closely focussing on the difficulties his partner would face in confronting an alien culture at a time in her life when she was especially vulnerable. It seems to me that the First-tier Tribunal had the threshold of "very serious hardship" well in mind when it made its decision albeit it without expressly citing it. In those circumstances, Mr Kandola was quite right to acknowledge that his challenge had to identify irrationality in the decision below. Given the careful reasoning in the impugned decision, I consider that the Secretary of State has failed to demonstrate any material deficiency in the Judge's reasoning.

Decision:

The decision of the First-tier Tribunal did not contain a material error of law.

The appeal is dismissed

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Signed:
Deputy Upper Tribunal Judge Symes

Date: 15 January 2016