IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/09644/2014

THE IMMIGRATION ACTS

Heard at City Centre Tower Birmingham	**Decision & Reasons Promulgated**
On 27th October 2015	**On 28th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

MUHAMMAD TANVEER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Pakistan born on 1st December 1986. He first arrived in the UK on 3rd May 2011 when he was given leave to enter as a Tier 4 (General) Student Migrant until 20th August 2012. That leave was subsequently extended until 27th December 2013. On 23rd March 2013 the Appellant married by way of a traditional Islamic ceremony the Sponsor, Misbah Nasar and on 18th December 2013 applied for further

leave to remain as her spouse. That application was refused for the reasons given in a Notice of Decision dated 4th February 2014 when the Respondent also decided to remove the Appellant under the provisions of Section 47 Immigration, Asylum and Nationality Act 2006. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge Osborne (the Judge) sitting at Stoke on Trent on 17th June 2014. She decided to dismiss the appeal under the Immigration Rules for the reasons given in a Decision dated 27th June 2014. The Appellant sought leave to appeal that decision, and on 5th November 2014 such permission was granted.

Error of Law

2. I must first decide if the decision of the judge contained an error on a point of law so that it should be set aside.

3. In dismissing the appeal, the judge considered the relevant provisions of Appendix FM of HC 395. Whilst the judge was satisfied that the Appellant was validly married to Misbah Nasar, and that the application for leave to remain satisfied some of the relevant requirements of Appendix FM, the judge was not satisfied that the Appellant satisfied the requirements of paragraph R-LTRP.1.1(c)(ii) because he did not meet all of the requirements of paragraph E-LTRP, for example, the financial requirements. Therefore the judge considered paragraph EX.1. The judge was satisfied that there was a genuine and subsisting relationship between the Appellant and his wife who was a British citizen and present in the UK, but she was not satisfied that there were insurmountable obstacles to the Appellant continuing his family life with his wife outside the UK. The judge's reasons for that conclusion are given at paragraphs 26 and 27 of the Decision. The judge found that Pakistan was the country of the Sponsor's cultural heritage, and that she had close family members living there. The judge accepted that the Sponsor preferred to remain living in the UK where she had been born and raised, but the Appellant himself had immediate family members resident in Pakistan who could provide him and his wife with support. Both the Appellant and the Sponsor were young and in good health. There were no children to consider. Both the Appellant and the Sponsor had the benefit of an education in the UK.

4. Having decided that the Appellant did not meet the requirements of Appendix FM of HC 395, the judge decided that she was not required to undertake any further assessment of the Appellant's Article 8 ECHR rights following the decisions in **Gulshan (Article 8 – New Rules – Correct Approach) [2013] UKUT 640 (IAC)** and **R (Nagre) v SSHD [2013] EWHC 720 (Admin)**.

5. At the hearing before me, there was no appearance by or on behalf of the Appellant. I was not supplied with any explanation for his absence. I was satisfied that the Appellant had been notified of the hearing in accordance with the provisions of the Tribunal Procedure (Upper Tribunal) Rules 2008 and therefore I decided to proceed to hear the appeal.

6. Mr Smart made a short submission in which he said that the judge had considered all the relevant evidence and had made findings of fact open to her upon that evidence. The judge had correctly applied the provisions of Appendix FM of HC 395. The judge had been correct not to consider the Appellant's Article 8 rights outside of the Immigration Rules for the reasons explained in **SSHD v SS(Congo) and Others [2015] EWCA Civ 387**.

7. I find no material error of law in the decision of the judge. Although leave to appeal was granted, the grounds of application do not seek to identify an error on a point of law, and amount to no more than a repeat of the arguments which were put to the judge. I agree with the submission of Mr Smart that the judge made proper findings of fact upon the evidence before her, and correctly applied the provisions of Appendix FM. Having dismissed the appeal under the Immigration Rules, I again agree with the argument of Mr Smart that the judge was not obliged to consider the Appellant's Article 8 rights outside the Immigration Rules following the ruling in **SS (Congo)**. It is apparent from what the judge wrote that bearing in mind the public interest, the Appellant did not have a reasonably arguable case under Article 8 which had not already been sufficiently dealt with by consideration of the appeal under the substantive provisions of the Immigration Rules. In any event, from the findings made by the judge, it is clear that had she considered the Appellant's Article 8 ECHR rights outside of the Immigration Rules, she would have found the Respondent's decision proportionate, and therefore any error of law in this respect by the judge is not material.

Notice of Decision

8. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. That decision is not set aside. The appeal to the Upper Tribunal is dismissed.

Anonymity

9. The First-tier Tribunal did not make an anonymity order and I find no reason to do so.

Signed Date

Deputy Upper Tribunal Judge Renton