



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

Appeal number: IA/33633/2014

THE IMMIGRATION ACTS

**Heard at Field House
On February 17, 2016**

**Decision & Reasons Promulgated
On May 13, 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR HAMZA ALI BABAR
(NO ANONYMITY DIRECTION)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

Appellant
Ltd

Mr Ahmed, Counsel, instructed by Shehzad Law Chambers

Respondent

Mr Tarlow (Home Office Presenting Officer)

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. The appellant entered the United Kingdom on March 4, 2011 having been given leave to enter the United Kingdom as a Tier 4 student until June 22, 2013. He married Lubna Begum, a British citizen, on May 22, 2013.
2. On June 21, 2013 he submitted an application to vary his leave to enable him to remain based on his marriage. This was refused by the respondent on October 2, 2013 and following an appeal submitted under Section 82(1)

of the Nationality, Immigration and Asylum Act 2002 his appeal came before Judge of the First-tier Tribunal Ellerman on March 31, 2014. She found the decision was not in accordance with the law and remitted the decision back to the Secretary of State.

3. The respondent considered the matter further but again refused the application on August 13, 2014. The decision taken by the respondent considered the application under Section EX.1 of Appendix FM of the Immigration Rules, Paragraph 276ADE and the respondent then went onto briefly consider whether there were any exceptional circumstances to merit consideration outside of the Rules. There was no consideration of their child's situation because at that point in time he had not been born. His date of birth is December 27, 2014.
4. The appellant appealed this decision on August 26, 2014, under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. The appeal came before Judge of the First-tier Tribunal Farrelly on May 28, 2015 and in a decision promulgated on June 17, 2015 he refused the application having regard to the Immigration Rules and article 8 ECHR.
6. The appellant lodged grounds of appeal on June 30, 2015 submitting Judge of the First-tier Tribunal Farrelly had erred but permission to appeal was refused by Judge of the First-tier Tribunal Brunnen on September 11, 2015 on the grounds the appeal grounds amounted to a mere disagreement and were an attempt to re-argue the case. Those grounds were renewed to the Upper Tribunal on October 12, 2015 albeit the grounds were drafted by Counsel-the appellant had hitherto been unrepresented. Upper Tribunal Judge Frances found on November 6, 2015 it was arguable there had been an error in law. In a rule 24 response dated January 7, 2015 the respondent conceded the error and invited the Tribunal to list the matter for an oral hearing.
7. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that Order.
8. The matter came before me on the above date. Mr Tarlow and Mr Ahmed had discussed the case before the matter was formally dealt with. Their joint approach was that the refusal letter dated August 13, 2014 had not engaged at all with Appendix FM of the Immigration Rules and there was a material change that had not been considered by the respondent namely the appellant and his wife had a young child who is a British citizen.
9. Mr Tarlow further conceded, albeit stressed it would be a matter for the case worker, that the evidence in the original bundle suggested that the financial requirements had been met and this application was likely to succeed.

10. Both representatives invited me to remit this matter back to the Secretary of State on the basis the original decision was not in accordance with the law.
11. I pointed out to both parties that Judge of the First-tier Tribunal Ellerman had done this on March 31, 2014 and we appeared to be back in the same position as she had been. Mr Tarlow assured me that the matter would be looked at properly this time as a full note would be provided by him.
12. In the circumstances I find the decision is not in accordance with the law because it suffered from a defect in procedure. The effect of this determination is the August 13, 2014 decision is quashed and that the application remains outstanding awaiting a lawful decision.

DECISION

13. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision. The matter is remitted back to the Secretary of State for the reasons set out above.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis

FEE AWARD

I do not make a fee award because the matters that have led to this juncture have only arisen through the passage of time and the intervention of legal representatives.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis