



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/01027/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Birmingham
On 29 September 2017**

**Decision & Reasons
Promulgated
On 04 October 2017**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**MUHAMMAD RAFAQAT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Reyaz, Rasools Law

For the Respondent: Mr Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Muhammad Rafaqat, was born on 13 July 1990 and is a male citizen of Pakistan. He entered the United Kingdom in April 2011 on a student visa. Thereafter, he overstayed in the United Kingdom. In March 2015 he was encountered working in Rochdale. He made a human rights claim based on private life grounds and his application was refused without any right of appeal (it was certified as clearly unfounded). On 19 July 2016, the appellant made a claim for asylum. On 17 January 2017, a

decision was made to refuse to grant the appellant asylum. The appellant appealed against that decision to the First-tier Tribunal (Judge Caskie) which, in a decision promulgated on 21 March 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Before Judge Caskie, the appellant's representative indicated that "no aspect of the case was being pursued but Article 8 inside and outside the [Immigration] Rules". As Mr Reyaz, who appeared before the Upper Tribunal, put it in his submissions, the case turns upon the nature of the appellant's claimed relationship with his partner, described in the decision [12] as "the appellant's wife"; the judge noted [8] that the appellant and his partner had not entered a civil marriage because the Home Office had retained the appellant's passport. I shall, therefore, refer to this person as "the appellant's partner". She has two children (H and R) who "have contact with their [natural] father at the time of Eid only" [12]. The children H and R are British citizens. Mr Reyaz submitted that the strength and nature of the appellant's relationship both with his partner and with the children was such that the judge should have allowed the appeal. Instead, the judge had made a number of findings favourable to the appellant but he had concluded that the relationship was not genuine or subsisting. Mr Singh, for the Secretary of State, submitted that the judge had found this a difficult decision to reach [41] but that his findings on the evidence, which had been coloured by the fact that he found that the appellant and his partner had given inconsistent and untruthful evidence, were sustainable as was the judge's conclusion that the appellant did not satisfy the requirements of HC 395 nor could his appeal succeed under Article 8 ECHR outside the Immigration Rules.
3. The judge summarised at length the evidence which he heard from both the appellant and his partner. He recorded in detail the inconsistent evidence given by the two witnesses and concludes that either or both of them gave untruthful evidence to the Tribunal. The judge found that there was "clearly some form of relationship between the appellant and his partner" [33]. He found that the appellant and his partner were living together with the children in Birmingham. He found that the relationship between the appellant and the partner was "clearly one of some length" although he did record that there was no legally-recognised marriage. Equally, the judge found that both the appellant and his wife "have simply lied to me" [34]. The extent of the lying was very serious; he found that the appellant's evidence had been "entirely contradicted by the evidence of his wife". This was particularly true of the contact which the appellant claimed to have had with his partner during the period of her marriage to another man. The judge was invited to find that there was a genuine and subsisting parental relationship between the appellant and the children but he "noted that evidence of [the appellant's] involvement in the lives [of the children] was simply lacking". He found that the appellant did not seem to "understand that a genuine and subsisting parental relationship with children involved more than simply the functional tasks [such as taking them to and from school etc.] described". The judge found [37] that there was no relationship between the appellant and the children prior to July 2015.

4. At [41], Judge Caskie wrote:

This has not been an easy determination to write because I am entirely satisfied there is some form of relationship between the appellant and his partner. I simply do not know what the nature of that relationship is because of the lies and inconsistent evidence that has been presented to me. For the avoidance of doubt, I make clear that I am not satisfied as to the nature and extent of any relationship the appellant claims to have with any of the other parties involved in this application, including his wife and the three children. In those circumstances, the appeal is dismissed as the needs of immigration control far outweigh the rights of the parties involved to continue whatever relationships they might have with one another.

5. In essence, Mr Reyaz's submission was that, given the findings which the judge had made about the relationship between the appellant, his partner and the children, he was left with no option but to allow the appeal. As regards the children, the public interest did not require the appellant to leave the United Kingdom given the provisions of Section 117B(6) of the 2002 Act (as amended). It is also not the Home Office's current policy to remove an individual who had a current and subsisting genuine relationship with a partner or children who are British and who cannot (as Judge Caskie found) relocate to Pakistan. The judge's decision was, therefore, perverse.
6. The problem with such a submission is that it entirely fails to engage with the nuanced analysis of Judge Caskie. It is plain that the judge was fully aware of the apparent contradiction between the evidence in this case (which appeared to show that the appellant is married to his partner, that they live together and that he is involved on a daily basis in the lives of her children) and his conclusion that the appeal should be dismissed. It is because Judge Caskie was aware of that apparent contradiction that he went to some length, in particular at [41], to explain the reasons for his decision. The judge has acknowledged the evidence which appears to show the existence of a relationship but, equally, both the appellant and his partner were found to have given untruthful evidence about that relationship to the Tribunal. As the judge found, that untruthful evidence has obscured the nature of the relationship between the appellant, his partner and the children to such an extent that the judge was unable to conclude that those relationships were genuine and subsisting. In light of the fact that witnesses had lied to the judge, that was a conclusion which he was fully entitled to reach. If Mr Reyaz's submission is right, then the judge would have been compelled to ignore in his analysis the fact that the witnesses lied to him.
7. The consequence of the untruthful evidence given by the witnesses was that the judge was left with no clear idea of the true nature of the relationships between the parties involved in the appeal. However, the judge was not required to define exactly what those relationships may be; the onus rested on the appellant to prove his case and the judge found that he had failed to do so. The judge was required to consider whether the relationships were of such a strength and nature as to require that the appellant remain in the United Kingdom. It was open to the judge to

conclude that they were not. I can identify no error of law in his analysis which would lead me to set aside his decision.

Notice of Decision

8. This appeal is dismissed.
9. No anonymity direction is made.

Signed

Date 5 October 2017

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 5 October 2017

Upper Tribunal Judge Lane