



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA085212016

THE IMMIGRATION ACTS

Heard at Field House
On 17 July 2017
Prepared 17 July 2017

Decision & Reasons Promulgated
On 20 July 2017

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR ALI AHMAD
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms C Robinson of Counsel instructed by Lupins (Olympic Way)
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Secretary of State appeals, with permission, against a determination of Judge of the First-tier Tribunal Adio promulgated on 13 April 2017 in which he allowed the appeal of Mr Ali Ahmad against a decision of the Secretary of State to refuse him leave to remain on human rights grounds.
2. Although the Secretary of State is the appellant before me I will, for ease of reference, refer to her as the respondent as she was the respondent in the First-tier. Similarly, I will refer to Mr Ali Ahmad as the appellant as he was the appellant in the First-tier.
3. The appellant is a citizen of Pakistan, aged 26. He entered Britain in 2008 on a "multi-child unaccompanied visa" which had been granted on 29 August 2006. He was encountered by police during a visit to a residential address in January 2010 and arrested and served with FORMS IS151A and IS96 as an overstayer subject to administrative removal. He failed to report and was again encountered working in April 2016 and again served with documentation informing him of his liability to removal as an overstayer and detained. He claimed to be married to a British citizen and in April 2016 made a human rights claim. In May of that year he claimed asylum. His human rights claim was refused and certified on 9 May 2016 but those removal directions were cancelled due to the asylum claim and his case was accepted for consideration. His application for asylum was refused on 4 July 2016. He appealed on both asylum and human rights grounds.
4. His appeal was heard by Judge Adio who set out the basis of the appellant's asylum claim in paragraphs 4 onwards of the determination and also set out evidence from the appellant and his wife regarding their relationship. In brief his wife stated that they had started the relationship in 2012 and the appellant had proposed to her on 19 March 2014. She said that they had a genuine relationship and she had converted to Islam. He had told her about his status early in 2013. She stated that she had family in Britain and that she was working in a nursery although she was qualified as a primary school teacher. Her evidence is that she was earning £17,400 per annum. She talked of the difficulties she would face if she were forced to live in Pakistan. Various friends and relatives of the appellant and his wife spoke of the genuineness of the relationship.
5. Having set out details of the submissions the judge in paragraphs 24 onwards set out his findings of fact. He first considered the appellant's claim to asylum. He stated that despite negative points which went against the appellant's credibility there were a number of points which were in his favour. Indeed his claim that he had been targeted by the Sunni Tehreek Movement in his area at one stage appears to have been accepted in that the judge accepted that he had a graze from a bullet in his arm and he accepted also that his wife had said that he had told her of his problems.
6. However, the judge did find many elements of the appellant's claim for asylum to be lacking in credibility and found that for him there would be a sufficiency of protection in Pakistan and indeed that he would be able to internally relocate away from his home area.

7. In paragraphs 33 onwards he dealt with the appellant's Article 8 claim. He accepted that this was a genuine marriage: he had noted that the sponsor was a British citizen. He then went on to consider whether or not paragraphs EX.1 and EX.2 of the Rules applied. He clearly stated that he had to consider whether or not there were insurmountable obstacles to continuing family life overseas. In paragraphs 35 and 36 he stated:-

"35. EX.2 defines the insurmountable obstacles as 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. Having considered all the evidence before me I find that there are insurmountable obstacles to the family life continuing with the partner outside the UK in view of the following.

36. The appellant's partner is employed in the UK as a deputy manager of Tiny Tots Nursery. Bearing in mind she is a white British Muslim woman who has never been to Pakistan before and does not speak Urdu and has all her family and friends in the UK she will find it extremely difficult to fit into the culture and the way of life in Pakistan. She has never lived there and would not have the family support that could make day to day living with her husband practicable. The couple have been trying for children for the past one and a half years and the appellant's partner has been diagnosed with polycystic ovarian syndrome and this is having an impact on their ability to have children. As a British citizen she would not be able to have her entitlement to seek the best health facilities she can to improve her chance of having a baby with her husband. I therefore find for these reasons the appellant satisfies the requirements of Article 8 within Appendix FM of the Immigration Rules."

Although he had dismissed the appeal on asylum grounds he therefore allowed the appeal on human rights grounds.

8. Both the appellant and the Secretary of State appealed against the decisions of the Immigration Judge. Permission was not granted on the appellant's application against the dismissal of the asylum claim but permission was granted to the respondent to challenge the decision to allow the appellant's human rights appeal.

9. Mr Tarlow relied on the grounds of appeal. He submitted that the difficulties which might be faced by the appellant's wife were not insurmountable difficulties when considered against the guidance in the judgement of the Court of Appeal in **Agyarko & Others [2015] EWCA Civ 440**. He relied on the letter of refusal in which it was argued that the appellant's wife would have some support in Pakistan and that being a white female and British would not cause serious hardship. It had been stated that it was a sheer conjecture on behalf of the judge to consider that the appellant's wife could not adapt to life in Pakistan as the appellant had the ability and tenacity to adapt into an alien culture in Britain and indeed had worked here without family

support. It was argued that the couple would be able to relocate to a large city in Pakistan.

10. Ms Robinson argued that the judge had properly set out in paragraphs 35 and 36 the relevant test and gave reasons for allowing the appeal. He had referred to what he considered were insurmountable obstacles to the appellant's wife relocating to Pakistan as a white British woman who did not speak Urdu. Moreover of course she did not have family support there and the appellant would have difficulty in returning to his home area. She referred to the appellant's wife's witness statement which set out in detail her belief that she would not be able to integrate into life in Pakistan and indeed her fear of being expected to do so. Evidence regarding her work was put forward and it was argued that the judge's findings were fully open to him on the evidence.

Discussion

11. The reality is that the reasons for refusal letter refer to the appellant's ability to relocate here and suggest that therefore the appellant's wife could adapt to living in Pakistan. That is, I consider, a non sequitur. It is much more difficult for her to pick up Urdu or to find work and as a white woman she would be in an alien culture. Moreover, the other factors mentioned by the judge, including her entitlement to receive fertility treatment here as a British citizen, are relevant. It was also pointed out to me that there was evidence that the appellant's wife's mother was suffering from cancer and required her assistance here although that was not a matter before the judge. I note the Foreign Office guidance which was before the judge.
12. The reality is that the judge did properly direct himself as to the relevant test, set out relevant factors and reached a conclusion which was open to him on the evidence. I bear in mind the judgment of the Court of Appeal in **Mukarkar [2006] EWCA Civ 1045** when it is stated that if one judge when considering the Article 8 rights of an appellant is more generous than another might be that is not an error of law. In this case I consider, notwithstanding the appellant's immigration history and the provisions of section 117B, that the judge reached a conclusion which was not only open to him but in no way could be characterised as perverse. I would add that having observed the appellant's wife I would, should she have given evidence have considered that she would appear to be a vulnerable person who would have find it impossible to live Pakistan. In all I consider that the decision of the judge to allow this appeal on human rights grounds was a decision which was open to him and I therefore dismiss the appeal of the Secretary of State. The decision of the judge to allow the appeal on human rights grounds shall stand.

Notice of Decision

13. The appeal of the Secretary of State is dismissed. The decision of the judge in the first-tier to allow this appeal on human rights grounds shall stand.

Signed 
Upper Tribunal Judge McGeachy

Date: 20 July 2017