Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/06420/2016**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 26 January 2018	**On 7 February 2018**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

MUHAMMAD [I]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant:	Mrs R Pettersen	(Senior Home Office Presenting Officer)
For the Respondent:	Mr T Hussain	(Counsel)

DECISION AND REASONS

1. This is the Secretary of State's appeal to the Upper Tribunal, brought with the permission of a Judge of the Upper Tribunal, from a decision of the First-tier Tribunal ("the tribunal"), which was sent to the parties on 23 May 2017, whereupon it allowed the respondent's (hereinafter "claimant's") appeal against the Secretary of State's decision of 25 January 2016, refusing to grant him leave to enter the United Kingdom on human rights grounds.

2. By way of brief background, the claimant is a national of Pakistan. It was accepted by the tribunal that he was in a genuine, subsisting and long-term relationship with a female British Citizen one [SA] and that the couple had two British Citizen children who had been born on [ ] 2007 and [ ]

2009 respectively. The tribunal, to my mind, clearly proceeded on the basis that the couple did not have a valid marriage recognised in UK law. It equally clearly decided that the requirements of the Immigration Rules relating to partners or parents were not met. However, after a thorough appraisal of all relevant matters encompassing the question of the best interests of the British Citizen children and the genuineness of the relationship, and after an evaluation of the factors referred to in section 117B of the Nationality, Immigration and Asylum Act 2002, it decided to allow the appeal under Article 8 of the European Convention on Human Rights (ECHR) outside the rules. The key reasoning is contained in a passage of the decision which runs from paragraph 26 to 59. I do not need to set all of that out. But, since it has received some attention in the subsequent submissions I will set out what the tribunal had to say at paragraph 56 of its decision. It said this:

> "56. I have found that there is a genuine and subsisting relationship between the appellant and his UK family. Such a finding by the entry clearance officer (and a valid marriage) would have meant that the Appendix FM application would have been allowed. The Immigration Rules are Article 8 compliant and it follows that I must find that the public interest in immigration control is much reduced."

3. The Secretary of State sought permission to appeal, arguing that, as I understand it, the tribunal had wrongly thought that there was a valid marriage and had proceeded on that basis such that it followed that it was wrong to have concluded that the public interest in immigration control was "much reduced". Permission to appeal was originally refused by a Judge of the First-tier Tribunal but was subsequently granted by a Judge of the Upper Tribunal who seemed to be of the view that the tribunal might have thought the couple were validly married in circumstances where it seemed that they were not and suggested that it had failed to grapple with that aspect. It was also said in the grant of permission that if the couple were neither married nor engaged to be married and had not actually cohabited for at least two years (and the evidence was that they had lived in different countries for much of the period of the relationship) they could not fall within the Immigration Rules "and Article 8 cannot, arguably, be invoked to make good the shortcoming".

4. Permission having been granted there was a hearing before me. Representation was as stated above and I am grateful to each representative. Mrs Pettersen, for the Secretary of State, did not rely, in terms, upon the points made in the grant of permission nor the points made in the written grounds of appeal. Instead, she argued that the tribunal had erred through failing to consider and contemplate the possibility of the claimant making a fresh application for entry clearance on the basis of any future marriage that he might enter into with his sponsor or on the basis of their becoming engaged. Mr Hussain, for the claimant, suggested that the Secretary of State was simply seeking to re-argue matters already properly decided by the tribunal.

5. As I indicated to the parties at the hearing, I have concluded that the making of the decision by the tribunal did not involve the making of an error of law. Accordingly, that decision must stand.

6. I do not accept that the tribunal was required to grapple with the marriage aspect notwithstanding that suggestion in the grant of permission. On my reading it was not argued on behalf of the claimant that he was in a legally binding marriage with the sponsor as would be recognised under UK law. The tribunal, I am entirely satisfied, proceeded on the basis that that was so. Indeed, it seems to have been agreed between the parties at the hearing that it was.

7. There may have been a misunderstanding on the part of the author of the grounds as to what the tribunal was actually saying at paragraph 56 of the decision. It was not suggesting, in that

paragraph, that there was a valid marriage between the couple. Nor, insofar as it is relevant bearing in mind the terms of the grant, was it suggesting that the parties had cohabited for two years such that they met the part of the Immigration Rules which caters for such situations. All that was being said was that the relationship had been found to be a genuine and subsisting one and if in those circumstances the two had actually had a valid marriage then that would have resulted in the application succeeding under the rules. It was that which caused the tribunal to conclude that the public interest in immigration control was, in all the circumstances, much reduced.

8. I have concluded, on the above basis that there is, therefore, no merit in the grounds as submitted and no merit in the points raised in the grant of permission. The additional argument put by Mrs Pettersen was not in the grounds and no application to amend those grounds had been made. In any event, I would agree with Mr Hussain that that point, taken for the first time before me, does not go beyond re-argument. The tribunal's Article 8 assessment was a clear and thorough one. The tribunal properly identified matters which weighed significantly in the claimant's favour such as the genuineness of the relationship, its longevity and the best interests of the children. It was said, in that context, that their best interests lie in remaining in the United Kingdom and having both parents with them. That was particularly so given that one of the children has significant disabilities.

9. I am satisfied that the tribunal analysed the evidence rationally and appropriately. I am satisfied that it did not misdirect itself in law. I am satisfied that it did not reach perverse findings or conclusions. Its consideration of the Article 8 arguments outside the rules was holistic. The outcome it reached was open to it and has been adequately explained.

10. In light of the above this appeal to the Upper tribunal is dismissed.

Decision

The making of the decision by the First-tier Tribunal did not involve the making of any error of law. Accordingly, that decision shall stand.

No anonymity direction is made. None was sought before me.

Signed: Date: 5 February 2018

Upper Tribunal Judge Hemingway

FEE AWARD

I make no fee award.

Signed: Date: 5 February 2018

Upper Tribunal Judge Hemingway