Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07516/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19th April 2018	**On 4th May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR A I
(ANONYMITY RETAINED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Adophy of Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant, born on [ ] 1967, is a citizen of Pakistan. The Appellant had made a protection claim which had been refused by the Respondent on 25th July 2017. The Appellant had appealed that decision and his appeal was heard by Judge of the First-tier Tribunal Howard on 20th December 2017. The judge dismissed his appeal on all grounds.

2. Permission to appeal was applied for on behalf of the Appellant on 12th February 2018. Permission to appeal was granted by the First-tier Tribunal Judge on 21st February 2018. It was noted that the judge had referred to the Appellant and his partner being married which was contrary to the witness statements and it was said that if the judge had erred on that point, that may have affected his remaining findings in the balancing exercise and therefore the matter was arguable.

Submissions on behalf of the Appellant

3. It was submitted by Mr Adophy that the judge had misdirected himself regarding the marriage and there was a misdirection under Section 55 of the Borders Act 2009 in respect of the best interests of a child. It was further said that because there had been no consideration of the case under Article 15(c), then there had not been any proper proportionality assessment under Article 8 and therefore that in itself was an error of law. It was also said that when looking at the five stage test of **Razgar** at paragraph 38 the judge had stopped at an earlier stage and objective evidence had not been considered. I was referred to Home Office guidance in respect of the rights or lack of rights of a child in this respect.

Submissions on behalf of the Respondent

4. It was conceded that the judge may inadvertently referred to the parties as being married rather than simply being in a partnership. However, it was noted that the evidence had been put on the basis they intended to marry and indeed, it was submitted that on return to Pakistan the Appellant's partner could if she wished join him there and they could get married. The Home Office guidance was referred to and put in its context by Mr Avery. It was noted that when considering Article 8 it did not appear that the judge had looked at Section 117A to D of the 2002 Act.

5. At the conclusion of submissions I reserved my decision to consider the evidence and submissions in this case. I now present that decision with my reasons.

Decision and Reasons

6. The Appellant is a citizen of Pakistan. The judge had at paragraph 17 noted that the Appellant was Muslim whilst his partner was not. He noted the Respondent had accepted that they were in an interfaith relationship. Although it appears at the hearing the Respondent sought to query the veracity of that relationship, the judge found no notice of that challenge had been provided and in any event, he found that theirs was a genuine relationship and that [M] is their child.

7. Further, at paragraph 18 the judge said:

> "The Appellant's asylum claim is predicated on the notion that as a Muslim man in a genuine relationship with an Indian national, Hindu

> woman, if returned to Pakistan to live together as man and wife they would be persecuted due to the interfaith nature of their relationship".

That paragraph does not suggest the judge operated under the misapprehension that they were married. It is the case that thereafter he has referred to the Appellant and Ms [S] both as being in a relationship and also as married, or his wife. That appears more a lack of precision rather than any constant misunderstanding of the parties' position. Moreover, the gravamen of the situation was less the formality of the parties being married but rather they were in a committed and genuine relationship, as found by the judge, had a child and most significantly theirs was an interfaith relationship.

8. He considered the evidence presented and insofar as it was necessary to make factual findings he did so, providing an adequacy of reasoning and found in general terms a lack of credibility in the Appellant's account.

9. The judge had considered the country material. He had noted at paragraph 31 that the Appellant's material, and perhaps in particular the skeleton argument, rather missed the point, focusing on honour killings rather than interfaith marriages. He further stated that if the Appellant was returned, the Appellant had adduced no evidence that Ms [S] would not be able to join him in Pakistan. Indeed, the Respondent's refusal letter and the Home Office guidance were both documents before the judge. They did not disclose any risk or bar that crossed the applicable threshold in such cases.

10. In terms of Article 8 the judge had looked at the position of the child. Whilst he had not specifically referred to Section 55 of the Borders Act 2009 he had said at paragraph 38(1) "their child is very young and entirely dependent on her parents. She is not a British citizen. For the reasons set out above I am not satisfied the family cannot travel to Pakistan together".

11. He was entitled to reach that conclusion based on the evidence adduced. The issues raised by Mr Adophy relating to problems faced by the child are in the context of a child not knowing his father or having his father's name. That does not apply in this case. Reference to the killing or abandonment of young children born out of wedlock is by natural and proper inference a reference of ill-treatment or abandonment undertaken by the mother and/or parent. That is not the case here.

12. In terms of Article 8 the judge noted that Ms [S] was not a British citizen, had no right to remain in the UK and neither did the child. There was no evidence they could not go to Pakistan together as a family. There was no evidence presented of private life enjoyed by the Appellant. To that extent the judge found no breach of family or private life by removal and therefore he did not reach the final stage test of **Razgar**. To that extent, it is arguable he need not have considered Section 117A to D of the 2002 Act.

13. However, even if the judge erred in not considering the final stage test of **Razgar** on the issue of proportionality and/or Section 117 of the 2002 Act, it was not a material error because the facts of this case would inevitably have led him to the same conclusion. Indeed, a placement of Section 117 into the balance would have weighted matters even further against the Appellant than those considered by the judge.

14. He was therefore entitled to conclude that the Appellant was not in need of international protection nor that a return of the Appellant to Pakistan would place the United Kingdom in breach of its international obligations. In terms of Article 8 he had taken the view that there was no bar to family life continuing in Pakistan and the Appellant had disclosed no evidence of any merit regarding his private life in the UK. This is not a case in terms of Article 8 where the judge was looking at a partner and/or child that were themselves British citizens but in fact individuals who had no right to remain in the United Kingdom and it would appear that the relationship between the Appellant and Ms [S] had been entered into and continued at a time when both had at the very least precarious status in the UK. As indicated above, even though the judge took the view he need not proceed to the final stage test of **Razgar**, he had nevertheless looked at the core interest of the very young child and drawn a conclusion in terms of that child's best interest which he was entitled to make. Had he taken a somewhat different approach and reached the final stage test of **Razgar**, then he was bound to consider Section 117 of the 2002 Act and it is difficult to see how in all the circumstances of this case a proper assessment of all of the factors would have led the judge to any different conclusion than that which he reached.

Notice of Decision

15. There was no material error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

    Anonymity retained.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  Date 1/8/18

Deputy Upper Tribunal Judge Lever

TO THE RESPONDENT
FEE AWARD

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

Signed  Date 1/5/18

Deputy Upper Tribunal Judge Lever