



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

Appeal Number: HU/07438/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 January 2019**

**Decision & Reasons
Promulgated
On 14 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**G M
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam, counsel

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Pakistan, date of birth 4 March 1984, appealed against the Respondent's decision dated 17 June 2017 to refuse a human rights based application for leave to remain under the Rules and refused

the matter on the basis that there was no exceptional case for the grant of leave outside of the Rules.

2. Permission to appeal was given by Upper Tribunal Judge Perkins on 14 December 2018 to appeal the decision of First-tier Tribunal Judge Bowler dated 23 July 2017 which had led to the appeal being dismissed on human rights grounds.
3. The immigration history shows that the Appellant had originally applied in 2014 for leave to remain which had been rejected. A further application made was refused without a right of appeal and the matter was appropriately challenged. Ultimately a Section 120 notice was served raising the relationship between the Appellant and his partner, Ms [P], which claim was refused and certified in March 2017. The Respondent's case as put to the Judge was that the Appellant was treated as having made a new application on 1 February 2016 when the Section 120 grounds were submitted. It seems the unchallenged facts were that the Appellant had formed a relationship with Ms [P], a British national, which had developed into a special relationship, not least of one of the Appellant being the carer for Ms [P]. Ms [P] it was argued on the evidence before the Judge had been in a relationship of far greater length and significance than the Judge's decision had acknowledged. The issue was raised in the grounds and was said to be an error of fact which amounts to a significant error of law over their relationship and its duration.
4. In addition, the Judge made other findings in relation to the existence of a qualifying child called, for these purposes, W. The child W is the Appellant's cousin. The Judge accepted the role the Appellant played in W's upbringing and rather took the view on the information that a Mr Mahmood, the other 'special guardian', would be around even if the Appellant, the other 'Special Guardian', had to return to Pakistan.

5. What the current position may be in that respect has changed but I do not take it into account as demonstrating any error of law. The fact was that there were parental and other roles which the Appellant had. The evidence before the Judge was that the other special guardian was absent from the UK and was absent for significant periods of time. Thus, the real ability of the Mr Mahmood as special guardian to provide support and assistance were demonstrably limited. Thus, the reliance the Judge placed upon the availability of Mr Mahmood was more limited than could be assumed or the mother of W and Mr Mahmood being able to take on those responsibilities.

6. Having considered this matter it seemed to me that there was substance in the grounds, particularly of the relationship and the impact of separation of the Appellant from the qualifying child and further consideration needed to be given to the issue of reasonableness. It was more difficult to deal with the factual situation, which has been put to me, and was essentially not substantively challenged as to the length of relationship between the Appellant and Ms [P]. Accepting as I have been told the representations that were made, bearing in mind that Mr Aslam appeared before the First-tier Tribunal Judge, it seemed to me that there was substance in the point that the relationship was of greater significance than the Judge appeared to attribute on the evidence that was provided. I conclude the Original Tribunal's decision cannot stand. There was at least one error of law and potentially two and it seemed to me right and proper that those should both in fairness be addressed again.

DIRECTIONS

- (1) Returned to the First-tier. This case should be listed at Taylor House, not before First-tier Tribunal Judge Bowler or First-tier Tribunal Judge M Davies.

- (2) List for hearing two hours. No interpreter required.

- (3) Any further evidence being submitted in support of the appeal, updating material and otherwise to be served not less than ten working days before the further hearing.
- (4) The Appellant to serve a skeleton argument not less than five working days before the hearing.
- (5) Any additional documents relied upon by the Respondent to be served not later than five working days before the further hearing.

An anonymity order is made.

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 12 February 2019

Deputy Upper Tribunal Judge Davey