Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08011/2016

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 22 November 2018	**On 18 February 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

MN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Holmes, instructed by Legal Justice Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, MN, was born in 1988 and is a male citizen of Pakistan. He entered the United Kingdom in October 2011 as a student and thereafter claimed asylum. By a decision dated 19 July 2016 the Secretary of State refused the application. There was an appeal to the First-tier Tribunal but

the Tribunal's decision was set aside on appeal to the Upper Tribunal. The appeal was remitted to the First-tier Tribunal (Judge Dearden) which, in a decision promulgated on 27 February 2018, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant's partner is a citizen of Indonesia. The couple have a child together who was born in February 2015 and is aged 3 years. The appellant claims that, because he and his partner have a child born out of wedlock, his parents and extended family in Pakistan would carry out their threats to kill him or cause him serious harm. Accommodation checks would be made if the appellant attempted to exercise internal flight within Pakistan and this would, in turn, lead to his family knowing his whereabouts.

3. Judge Dearden rejected the appellant's asylum claim. He also made findings regarding the appellant's relationship with his partner and the child. When determining whether or not the appellant's partner and child would go to live in Pakistan with the appellant he noted that the appellant's partner was not prepared to do so because she was not prepared to wear a hijab. She also said that she would be unable to go to Indonesia because she would be at risk there from her former husband. The judge rejected the partner's account. He relied upon a UK entry clearance application made by the appellant's partner in April 2012 in which she indicated that she is not married but single. The judge found this to be a "marked discrepancy in the witness's account". The application apparently contains a photograph of the partner wearing a hijab.

4. The first ground of appeal relates to that finding. Both parties appear to agree that the judge had regard to the entry clearance application only following the conclusion of the hearing. During the hearing, it was asserted that the documents relating to the visa application had been served as far as back as December 2016. However, the Tribunal did not have a copy on file and the appellant's Counsel at the initial Upper Tribunal hearing was not in possession of a copy. Both parties agree that the documents and their contents were not put to either witness during the course of the hearing. The appellant submits that the judge should not have had regard to the entry clearance application without the appellant and his representative having the opportunity to comment upon the contents of that application.

5. I make the following observations on the ground of appeal. First, I accept that the judge should not have referred in his decision to evidence upon which the appellant had been unable to comment. I find that amounts to an error of law. The question remains, however, whether the error is material and, in particular, whether I should in consequence of it set aside the judge's decision. I note that the error only goes to the question of whether the appellant's partner could travel to Indonesia. Having rejected the asylum claim of the appellant, the judge had moved on to consider Article 8 ECHR and concluded that the family could relocate to Pakistan.

Prima facie, that finding is unaffected by any unfairness concerning the judge's consideration of the entry clearance application. Indeed, the first ground of appeal does not engage with the appellant's own claim to fear return to Pakistan. The judge's findings against the appellant on that issue remain undisturbed. I find that, although the judge did err in law, I should not set aside his decision on account of his error. I shall proceed to consider the challenges to the judge's finding that the family can relocate to Pakistan.

6. As I have noted above, I see no error in the judge's finding that the appellant's asylum claim should be dismissed and that there is no asylum or Article 3 ECHR impediment to the family returning together to live in Pakistan. The remaining challenges to the judge's decision concern the appellant's relationship with his partner and child. These findings are, on the face of them, somewhat peculiar. At [46] the judge found:

> "In this appeal I find the appellant and witness [the partner] have a child together. However for reasons stated above I am not satisfied there is an ongoing relationship between the appellant and the witness and therefore between the appellant and the child. I find the appellant does not have family life with his child."

7. I accept Mr Holmes' submission that the judge has wrongly conflated an assessment of the relationship between the appellant and the partner and the appellant and the child. The parties agree that the child is the natural child of the appellant and his partner. The fact that the appellant may no longer have a relationship which is genuine and subsisting with the partner does not, as Judge Dearden appears to believe, inevitably mean that he does not have a relationship with the child. That is a *non sequitur* and, considering that the family live together in the same home, borderline perverse.

8. Again I have to consider whether the judge's error should lead me to set aside his decision. Mr Holmes urged me to exercise caution before finding that the judge's error made no difference to the outcome of the appeal. The judge found that, even if the appellant's asylum claim were true, it would be possible for the appellant to exercise internal flight within Pakistan. He concluded that the appellant would, living other then in his home area of Azad Kashmir, "be safe to a practical standard". I can find no error with that finding. Indeed, I can find no error with the judge's rejection of the appellant's claim to be at risk in his home area. The question, therefore, is whether the family can relocate to Pakistan. At [42] the judge concluded that the appellant's partner does not speak Punjabi but could learn the language. The procedural unfairness referred to in ground 1 concerns the partner's reluctance to wear the hijab. I find that, whether or not the appellant's partner is reluctant to wear a hijab, she would conform to the dress codes of Pakistan if she returned to live in that country with the appellant and the child. In other words, her reluctance would not render the family's return to Pakistan unreasonable. To that extent, the judge's error is not material.

9. Mrs Pettersen submitted that whilst troubling, the judge's errors did not justify a rehearing of this appeal since the outcome remained inevitable. I agree. I refer to what I have said above regarding the partner's reluctance to wear the hijab. That finding effectively disposes of ground 1. This is an unusual case in which the procedural irregularity does not justify a rehearing of the appeal. The judge's somewhat egregious attitude towards relationships within this family are, for the reasons I have given, not material; I have proceeded on the basis that the appellant, his partner and the child enjoy family life together and that the appellant has a genuine and subsisting relationship with the child. There is no impediment, in my opinion, to the family continuing that family life in Pakistan either in the appellant's home area or, if there is any danger to him there (which I find there is not), then elsewhere within that country. That is my primary finding; I also find it there are no obstacles preventing the family relocating without fear of ill-treatment or without disruption to their family life together to the partner's home country of Indonesia.

10. In the circumstances, the appeal is dismissed.

Notice of Decision

11. This appeal is dismissed.

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 their 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 February 2019

Upper Tribunal Judge Lane

TO THE RESPONDENT
FEE AWARD

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

Signed Date 1 February 2019

Upper Tribunal Judge Lane