



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

Appeal Number: PA/06761/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester CJC  
On 14<sup>th</sup> January 2020**

**Decision & Reasons Promulgated  
On 22<sup>nd</sup> January 2020**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL  
G A BLACK**

**Between**

**ANWAR [S]  
NO ANONYMITY ORDER MADE**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Khan (Counsel)

For the Respondent: Miss R. Pettersen (Home Office Presenting Officer)

**ERROR OF LAW DECISION AND REASONS**

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge Dearden) (FtT) promulgated on 16<sup>th</sup> September 2019 in which the appellant's protection and human rights claims were dismissed.

## **Background**

2. The appellant's appeal on asylum and human rights grounds was based on a fear of persecution in Pakistan from the authorities as a result of his membership of the MQM (Muttahida Qaumi movement) in 1999. He claimed that he was arrested and then detained for 3 months. He arrived in the UK in 2012 having obtained entry clearance as a student Tier 4, and his wife and children joined him in 2014. All family members are dependent on his claim; he has three children and a fourth born in the UK, none of whom are "qualifying children."

## **Grounds of appeal**

3. In grounds of appeal the appellant argued that the FtT erred by failing to take into account a witness statement from his wife as evidence in support of his asylum appeal. The FtT refused an application for an adjournment requested because she was in the late stages of pregnancy and unable to travel. The FtT decided that the witness statement could stand as evidence [10].
4. The FtT failed to consider Article 8 ECHR and only scant reference was given to the issues in relation to the interests of the children [37 & 38].

## **Permission to appeal**

5. Permission to appeal to the Upper Tribunal (UT) was granted by FTJ G Wilson who considered that the FtT's failure to deal with Article 8 was arguably a material error in law. All grounds raised were arguable.

## **Submissions**

6. At the hearing before me Mr Khan, representing the appellant, expanded on the grounds of appeal and argued that the failure to refer to the wife's witness statement as evidence was a material error, as her account supported the appellant's claim for asylum. The FtT failed to consider any of the evidence under Article 8 in particular the length of residence and the fact that the children were in education in the UK.
7. In response Miss Petterson, for the respondent, contended that whilst the FtT had erred by failing to consider issues under Article 8 in any detail and failing to give adequate reasons, it was not material, given that the children were not "qualifying", there was no evidence of any exceptional circumstances and no evidence to show that there was family or private life in the UK.

8. I indicated my preliminary view that the Article 8 error was not material. I asked Mr Khan to make submissions with reference to evidence that he wished to be included in my consideration before I re made the decision.
9. Mr Khan emphasised that the children had formed links and friendships at school and had been in education in the UK for 6 years.

### **Discussion and conclusion**

10. I found that there was an error of law in the decision of the FtT in its failure to properly consider and assess Article 8 issues. It is unclear whether parts of the decision were in fact missing as there was a gap in the page left blank between paragraphs 38 and 39, which appeared on the next page. In any event the FtT gave limited consideration of Article 8 focusing solely on the best interests of the children and did not provide any further reasoning which would have left the appellant unclear as to why the appeal had failed.
11. As indicated above I was satisfied that such an error was not material given that there was no further evidence such as medical matters or evidence from the school before the FtT to show that Article 8 was engaged. And none was provided by Mr Khan when given the opportunity. There was no detailed evidence provided by the appellant in his witness statement about Article 8 issues. I am satisfied that none of the children are qualified children; they have not lived in the UK for 7 years or more. There was no evidence to show that they met the Immigration Rules family or private life. The appellant entered the UK in order to pursue studies and his family joined him. It was apparent to him that he had no basis for remaining in the UK once his asylum appeal had been determined and he had no further leave. He entered without any expectation for leave to be granted in future. The family would be returning to Pakistan as a unit and all spoke Urdu. They had family members in Pakistan and the appellant had been educated to university level and worked there as an accountant. He was a practising Muslim and would be able to re-assimilate culturally on return. The appellant's wife and children had no entitlement to remain in the UK and were aged 11, 9, 4 years old and lived in the UK for 6 years. It was in the best interests of the children given their ages to remain with their parents and for the family to return as a unit to Pakistan. There was no evidence to counter that their best interest lay in remaining with their parents given their age. They lived in Pakistan prior to 2014 and would be able to continue their education there; none had reached any significant stage educationally and there was no evidence relied on to indicate that there were any problems in pursuing education in Pakistan. There was some reference to medical issues for the appellant who suffers from diabetes and high blood pressure. There is adequate medical treatment available in Pakistan.

12. In terms of the FtT's wife's statement, I am satisfied that there was no material error of law in the FtT's failure to make reference to it as evidence in the decision. The FtT stated that it would take into account the statement as evidence and attach appropriate weight [10]. Clearly it would have been preferable had the FtT considered the statement in the body of the decision, however, I am satisfied that no material error in law arises. The witness statement was unsigned and undated. The content adds nothing further to the evidence given by the appellant. The FtT has thoroughly considered the evidence from the appellant as to risk and found that evidence lacking in credibility and not consistent with the background material [34 (1)]. The FtT gave full consideration of the supporting evidence including photographs, medical report and took into account the delay in making the claim for asylum.
13. There is no material error of law disclosed in the decision which shall stand.

**Decision**

14. The appeal is dismissed.

Signed Date 16.01.2020

GA Black  
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER  
NO FEE AWARD

Signed Date 16.01.2020

GA Black  
Deputy Judge of the Upper Tribunal