Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/01119/2020**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 October 2021	**On 17 November 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

MUHAMMAD SHAHID IQBAL BUTT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Dhanji, instructed by Deccan Prime Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the rehearing of the appeal of Mr Butt against the Secretary of State's decision of 7 January 2020 refusing to grant him leave to remain on Article 8 human rights grounds.

2. He had an appeal before the First-tier Tribunal in November 2020. That appeal was allowed but subsequently, permission having been granted to the Secretary of State

to challenge that decision, following a hearing on 21 April 2021 I found errors of law in the judge's decision and set it aside for a remaking in the Upper Tribunal.

3. Mr Dhanji clarified at the outset that the two issues before the Tribunal were those of insurmountable obstacles to the appellant's removal to Pakistan and proportionality under Article 8. The point in respect to Chikwamba [2008] UKHL 40 which formed part of the judge's reasoning below and was also argued at the error of law hearing, was no longer being taken.

4. The appellant gave evidence, adopting his statement of 3 July 2020. He confirmed that he spoke English and said that he was using the services of the interpreter as he felt it easier to answer in his own language. As to whether he had ever sat an English language test in the United Kingdom he said he had gone there but they did not allow you to do such a test without a passport.

5. When cross-examined by Mr Lindsay the appellant was asked whether, given that the most recent medical evidence was 2019, he had currently no health problems and he said he had had a cardiac problem once but that he had no current health problems. As to whether this included his mental health he said he did not have a very strong memory.

6. He was asked what ties he still had in Pakistan and said only his old mother and there was no one else there. It was put to him that the First-tier Judge had found that he might be able to live with his mother in Pakistan and he said that he could not go there. He was asked why he could not live with his mother if he did have to go back to Pakistan, he said he had his wife here and would stay with her and that was his family.

7. He was referred to the fact that at paragraph 15 of his witness statement he said that he had no ties in Pakistan. He said that was not right as he had his mother there.

8. He had first met his wife in 2013. When he initially entered the United Kingdom on a visit visa he had known he had to return to Pakistan. He was asked whether it was right that he had never intended to go back but had intended to stay in the United Kingdom unlawfully, and said he had his intention to stay here as it was a good country here, that is right.

9. He agreed that his wife had previously said she was a Muslim convert. It was put to him that if he had to return to Pakistan and she chose to go with him they would not experience difficulty as a couple. He said there was huge difficulty for his wife there. Her whole family was in the United Kingdom and she was settled here. It was put to him that she must have known when the relationship developed that he would have to go back at some point and he said that she had never thought like that.

10. There was no re-examination.

11. In response to a question from me the appellant clarified that he spoke to his wife in English.

12. The next witness was the appellant's wife and sponsor Mrs Jodie Mary Flesher. She adopted and relied on the contents of the witness statement that she had signed on 3 July 2020, subject to an amendment in paragraph 9 which should read that the marriage was registered on 24 September 2018, not 2008.

13. She was asked if she was a Muslim and said no. It was put to her that before the First-tier Judge she had said that she was and she said that she had converted to Islam when she and her husband got married but she did not practise being a Muslim. She was referred to paragraph 15 of her statement and was asked why she could not live in Pakistan and said she did not know anything about Pakistan and did not speak the language and had her family and work here and problems with the pandemic. With regard to the latter she said that Pakistan had just come off the red list and she did not want to go.

14. On cross-examination she was asked whether it was correct that she was a convert to Islam but did not practise and she agreed that that was the case. She was asked whether if her husband had to leave and she decided to join him it was right that she would be able and willing to practise Islam in Pakistan and she said no. She was asked why she could not do this if she was a convert and she said she did not know.

15. She had known when she met her husband that he was in the United Kingdom lawfully and had known all along that he might have to go back. She was asked whether she had taken any steps to find out how she could adapt to living in Pakistan and said it would not be an option and this was their country here. She was asked whether potentially if he left she could sponsor him to re-enter lawfully as her spouse and she said they had not thought about it and they wanted to live here and did not want to go back.

16. There was no re-examination.

17. In his submissions Mr Lindsay relied on the refusal letter. With regard to the issue of very significant obstacles to the appellant reintegrating into Pakistan, he said that at the outset the genuineness and subsistence of the relationship was not disputed and it was also accepted that the appellant spoke English and was financially independent, though these were no more than neutral factors under section 117B of the 2002 Act.

18. With regard to the issue of insurmountable obstacles it was argued that there were clearly no such obstacles to family life continuing in Pakistan. The fact that the appellant's wife would choose not to go to Pakistan could not amount to an insurmountable obstacle. The threshold was a high one. The appellant had substantial ties to Pakistan where his mother lived. The First-tier Judge had found that he could live with his mother on return and there was no reason to depart from

that on today's evidence. He would have the support of close family if he chose to relocate there. There was no reason why he would not be able to work there nor any reason why his wife could not learn the local languages. She was British and had family in the United Kingdom, there was no reason why family life could not be maintained by visits and by modern means of communication. There was no objective evidence as to the difficulties she might experience because of her ethnicity or religion and indeed she had converted to Islam albeit she would not be willing to practise but the reasons given did not arguably amount to insurmountable obstacles and there were no HJ (Iran) issues. Taken all together the test was not met.

19. With regard to the issue of Article 8 outside the Rules there were no exceptional circumstances capable of giving rise to unduly harsh consequences. Both of the couple were aware from the outset that the appellant was in the United Kingdom unlawfully and might be required to return. This could be seen from the judge's decision at paragraph 37 and the error of law decision at paragraph 12 and today's evidence. It was important to note, bearing in mind that no children were affected, that the effects of section 117B(4)(a) and (b) were relevant. This effectively mandated that private and family life carried little weight and that was very significant to the Article 8 assessment as there was a strong public interest in the appellant's removal from the United Kingdom. He had entered on a visit visa and on today's evidence had always intended to remain and had done so for just over ten years now. There had been a number of applications to regularise his status, but the fact was it had been unlawful and section 117 emphasised the public interest in immigration control. When the balancing exercise was carried out it could only come down in favour of the public interest and the appeal as a consequence being dismissed.

20. In his submissions Mr Dhanji argued that with regard to the insurmountable obstacles issue the sponsor had said what the obstacles were. She had expressed her concerns about not speaking Urdu and the loss of her career in the United Kingdom and the significant disruption to her ties here and her fears about being in Pakistan at the time of the pandemic. Pakistan had only recently come off the red list. The threshold was a high one, but cumulatively she met the test and this would determine the Article 8 issues the Tribunal agreed.

21. If the Tribunal did not agree in that respect then in regard to the balancing exercise between the public interest and the family life the balance came down in favour of the appellant. It was accepted that under section 117B(1) there was a public interest in removal given the appellant's immigration history. There were the two neutral considerations on the positive side. He was within section 117B(4) and so little weight was to be given to the family life but that did not mean no weight. He was an overstayer but he had made frequent applications to regularise his stay and had a strong longstanding family life. The interference in that would be considerable, in particular for his wife. The weight to family life of the couple outweighed the public interest in this case and the appeal should be allowed.

22. I reserved my decision.

Discussion

23. As set out above, there are two challenges to the respondent's refusal decision in this case. The first of these is the decision that the appellant had not identified very significant obstacles to his integration into Pakistan if required to leave the United Kingdom and hence he could not satisfy the requirements of paragraph 276ADE(1)(vi) of HC 395. In addition it was concluded that there were not exceptional circumstances which would render refusal a breach of Article 8 of the European Convention on Human Rights because it would just result in unjustifiably harsh consequences for him, a relevant child or another family member.

24. As regards the former, it was noted in the decision letter that the appellant had lived in Pakistan up to the age of 32 and that he would have retained knowledge of the life, language and culture of Pakistan and would not face significant obstacles to reintegration there. The point was made that he was of employable age and there was no evidence to suggest that he would be unable to find work and support himself. It is relevant also to note in this regard the First-tier Tribunal Judge's finding at paragraph 32 of his decision that there might be some accommodation available to the appellant and the sponsor in the appellant's mother's home though that would be very basic accommodation.

25. The factors relied upon by Mr Dhanji in his submissions today, as set out above, essentially revolve around the difficulties that the sponsor in her statement and oral evidence said that she would experience. At paragraph 15 of the statement she said that she was unable to live in Pakistan due to her well-established life in the United Kingdom. She said at paragraph 13 that she is well settled in the United Kingdom and has established social, family and private life in the United Kingdom and in paragraph 14 went on to say that she was a British citizen by birth, they live in her parents' home with their permission and both her parents are British citizens by birth as are her grandparents. In her oral evidence she said that she did not know anything about Pakistan and did not speak the language and had her family and work in the United Kingdom and had concerns about the pandemic since Pakistan has just come off the red list.

26. Mr Dhanji rightly acknowledged that the threshold is a high one. In my judgment the evidence is not such as to show that there would be very significant obstacles to integration into Pakistan. Clearly there would be no such difficulty for the appellant for the reasons set out in the decision letter. As regards the sponsor, it is relevant to bear in mind the point made by Mr Lindsay that there is no objective evidence provided as to the difficulties she might experience because of her ethnicity or religion and it was relevant to note that she had converted to Islam albeit she said she would not be willing to practise that faith. Undoubtedly there would be difficulties, particularly bearing in mind her British heritage and background and the fact that she is a white Caucasian. But the points made do not in my view amount to

such as to be very significant obstacles to the relationship continuing in Pakistan. Accordingly the appeal cannot succeed on that basis.

27. As regards the issue of Article 8 outside the Rules, and the requirement to show exceptional circumstances capable of giving rise to unduly harsh consequences, it is relevant to bear in mind as again was argued by Mr Lindsay that both of the couple were aware from the outset that the appellant was in the United Kingdom unlawfully and might be required to return. It is clear from section 117B(1) of the Nationality, Immigration and Asylum Act 2002 that the maintenance of effective immigration controls is in the public interest. It was conceded by Mr Lindsay that the appellant can speak English and that he is financially independent, but these are as was acknowledged, neutral points only. It is clear from section 117B(4) that little weight should be given to a private life or a relationship formed with a qualifying partner that is established by a person at a time when the person is in the United Kingdom unlawfully. That is the case here. Also under sub-section (5) little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. The appellant has been in the United Kingdom unlawfully since the expiry of his visit visa August 2011 and from his evidence today it seems clear that he intended to stay in the United Kingdom all along. As Mr Dhanji rightly pointed out, the fact that little weight should be attached to a family life in the circumstances does not mean that no weight should be attached to it, and I bear that in mind and also the fact that the appellant though he has been in the United Kingdom unlawfully for ten years now has made frequent applications to regularise his stay. I bear in mind the fact that it is accepted that the genuineness and subsistence of the relationship are accepted and that the couple have a strong and longstanding family life. The consequences of an interference in that family life, particularly for the appellant's wife would be significant. However, carrying out the necessary balance between the public interest on the one hand and the family life on the other hand, I consider that the balance comes down firmly in favour of the public interest in the circumstances of this case. Accordingly the appeal is dismissed on this basis also.

No anonymity direction is made.

Signed Date 11 November 2021

Upper Tribunal Judge Allen