



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12713/2019**

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On the 19 August 2022**

**Decision & Reasons Promulgated
On the 05 September 2022**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

NIZAM MUNAWAR

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Patel, Counsel

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. In this decision I remake the substantive decision on whether the appeal brought by the appellant, against a decision of the respondent entry clearance officer dated 2 July 2019, refusing his entry clearance application to join his spouse in the United Kingdom ('UK'), should be allowed or dismissed on human rights grounds.
2. In a decision promulgated on 29 September 2020, Upper Tribunal ('UT') Judge Kekic gave reasons for setting aside a decision of the First-tier Tribunal ('FTT') dated 10 January 2020, allowing the appellant's appeal on human rights grounds on the basis that the failure to grant the appellant entry clearance constituted a

disproportionate breach of Article 8, ECHR. An application to set aside the UT decision on the basis that it was unfairly determined without a hearing was refused by UTJ Sheridan in a decision dated 1 April 2022.

Summary of background

3. The appellant (who is 29 years old) and his wife, Ms Irfan ('the sponsor') (who is 25 years old) are both citizens of Pakistan. The appellant resides in Pakistan with his family, albeit he completed his tertiary education in the UK in 2016. The sponsor has been resident in the UK since 2008 with her mother and siblings. The sponsor was granted discretionary leave ('DL') in April 2017, which continues. The sponsor is on the pathway to settlement (which requires 10 years DL).
4. The appellant and sponsor are first cousins and have known each other since childhood. They began a romantic relationship in the UK. It has been accepted on the appellant's behalf that he completed his studies in the UK in 2016 but then overstayed beyond the terms of his visa, before voluntarily returning to Pakistan on 7 June 2018. The appellant and sponsor got married on 10 August 2018 in Pakistan.
5. The sponsor returned to the UK after the marriage where she has continued to be in full-time employment. She has travelled to Pakistan on four occasions since the marriage to be with her husband.

Hearing and evidence

6. Ms Patel confirmed that the evidence she relied upon was limited to a 159-page bundle submitted the day before the hearing and two witness statements contained in the bundle before the FTT. She also relied upon a skeleton argument dated 15 October 2020, which had been submitted at an earlier stage of the proceedings.
7. After preliminary discussions, the parties accepted the following:
 - (i) The appellant has a right of appeal on human rights grounds. His family life with the sponsor is accepted, and there is no dispute that the appellant's right to family life is engaged under Article 8.
 - (ii) The requirements of the Immigration Rules ('the Rules') concerning entry clearance for partners (E-ECP) are met save for one: the 'eligibility relationship requirement' (E-ECP.2.1.) That is because the Sponsor has been lawfully resident at all material times but does not have settled status or British citizenship. It follows that there is no dispute that the appellant and sponsor are in a genuine and committed relationship following their marriage and the appellant can be adequately accommodated and maintained, without recourse to public funds in the UK.
 - (iii) GEN 3.1 and 3.2 of the Rules can be summarised as follows: where an application for entry clearance does not otherwise meet the requirements of the Rules, the decision-maker must consider whether on the basis of the information provided, there are exceptional circumstances which would render refusal of entry clearance a breach of Article 8 because such refusal would

result in unjustifiably harsh consequences for the appellant and / or the sponsor.

- (iv) It is particularly important in this appeal to consider the evidence in support of the submission that it is unjustifiably harsh and / or disproportionate to expect the sponsor to enjoy family life in Pakistan with the appellant.
8. The sponsor confirmed two witness statements dated 16 December 2019 and 10 August 2022. She was then cross-examined by Mr McVeety before being briefly re-examined by Ms Patel.
 9. I then heard submissions from both parties. Mr McVeety invited me to find that there was insufficient evidence to support the contention that it would be unjustifiably harsh to expect the sponsor to relocate to Pakistan to be with her husband. He contended that the sponsor was very familiar with Pakistan having lived there as a child and having visited on many occasions since. He submitted that the sponsor could adapt to the different culture in Pakistan given her background and family support in Pakistan and asked me to note that she accepted that she enjoyed a full traditional wedding. Mr McVeety also submitted that the sponsor did not rely upon any security or safety fears as to why she could not live in Pakistan and simply relied upon her wish to progress her career and further education in the UK.
 10. Ms Patel submitted that the sponsor has a particularly strong private life in the UK where she has lived for half her life with her mother and siblings and that she has an exemplary education and employment record here. Ms Patel asked me to note that the sponsor is halfway through the pathway required to obtain settled status and that in all the circumstances it would be unfair and disproportionate to expect her to relocate to Pakistan. Ms Patel did not draw my attention to any country background material relevant to her submission that the sponsor would not be able to progress her chosen employment and education in Pakistan. The bundle relied upon contained no country background information. I drew Ms Patel's attention to the *Country Policy and Information Note, Pakistan: Women fearing gender based violence, February 2020* which includes the following:

“4.2 Cultural context: position in society

4.2.1 The status of a woman in Pakistan differs in terms of their class, religion, education, economic independence, region and location (urban or rural), cultural and traditional values, caste, educational profile, marital status, number of children and so on. The majority of women live in rural areas.

Patriarchal attitudes and deep-rooted stereotypes about women's roles and responsibilities discriminate against them and maintain their subordination within the family and society.

4.2.2 A Thomson Reuters Foundation survey, dated 2018, consisting of 550 experts on women's issues, ranked Pakistan as the '[s]ixth most dangerous and fourth worst [country in the world for women] in terms of economic resources and discrimination as well as the risks women face from cultural, religious and traditional practices, including so-

called honor killings. Pakistan ranked fifth on non-sexual violence, including domestic abuse.'

4.2.3 The Georgetown Institute for Women, Peace and Security Index 2017/18 used a measure for discriminatory norms, derived from the Gallup World Poll that asked respondents whether 'it is perfectly acceptable for any woman in your family to have a paid job outside the home if she wants one.' In Pakistan, 73% of men disagreed with this proposition"

11. Ms Patel invited me to find that this information demonstrates that discrimination against women is endemic in Pakistan.
12. At the end of submissions, I reserved my decision, which I now provide with reasons.

Legal framework

13. There is ample authority in support of the proposition that the Rules are not a complete code as to how Article 8 is to be applied, but a starting point. If an application fails under the Rules, it must be considered under Article 8 outside of the Rules. The policy of the Secretary of State, as expressed in the Rules, should be given weight in deciding whether interference with the Article 8 right is proportionate.
14. In entry clearance appeals it is necessary to conduct an intensive fact-sensitive exercise to decide whether there would be a disproportionate interference with the sponsor's private and family life if the appellant's refusal of entry clearance were to be upheld - see KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC).
15. The burden of establishing a breach of Art 8 lies on the appellant on the civil standard of a balance of probabilities. However, the respondent bears the burden of justifying any interference with the appellant and sponsor's Article 8 rights under Article 8.2.
16. I must apply the well-known five stage test in R(Razgar) v SSHD [2004] UKHL 27 at [17]. It is undisputed that family life exists between the appellant and sponsor in this case on the basis that their relationship is genuine and ongoing. Further, I accept that the refusal of entry clearance infringes the family life that exists between them. As regards Art 8.2, the decision is in accordance with the law as the appellant cannot succeed under the Immigration Rules. The crucial issue, as agreed by the parties is whether the refusal of entry clearance is a proportionate interference with family life, having regard to the public interest set out in s. 117B of the Nationality, Immigration and Asylum Act 2002, as amended ('the 2002 Act').
17. In assessing proportionality, a "fair balance" must be struck between the interests of the individuals concerned, in this case the appellant and the sponsor, and the public interest (see Razgar at [20] per Lord Bingham). In striking that balance, I bear in mind what was said by Lord Bingham in SSHD v Huang [2007] UKHL 11 at [20]. In striking

the “fair balance”, given that the appellant cannot succeed under the Rules, I bear in mind whether there are “unjustifiably harsh consequences”. Article 8 does not create a “general obligation to respect a married couple's choice of country in which to reside” but must be considered holistically, having undertaken an assessment of proportionality evaluation exercise – see R(MM)(Lebanon) v SSHD [2017] UKSC 10 at [41].

Findings

18. As set out above a key issue in this case relates to why family life cannot be enjoyed in Pakistan. That is clear from the procedural history of the case. The FTT considered that the sponsor would struggle to readjust to the “overtly patriarchal society” in Pakistan where she would be required to live in her husband’s household and that given her professional life was in the UK and dedicated to assisting women, she would be caused particular hardship if required to relocate to Pakistan. The UT concluded that this reasoning contained material errors of law for these reasons, *inter alia*:
 - (i) the FTT gave no consideration to the fact that the relationship commenced when the appellant was an overstayer in the UK or that the marriage took place when it was known that the sponsor’s leave was limited;
 - (ii) there was no suggestion in the sponsor’s witness statement or oral evidence that she would struggle to live in a patriarchal society and the FTT’s finding on this point was speculative with no evidential basis;
 - (iii) the suggestion that the sponsor could not live with the appellant’s family was not supported by any evidence particularly when they are her close relations, and she has always lived with her own family even as an adult, and would therefore be used to living with extended family members;
 - (iv) the FTT failed to take into account the evidence suggesting that the sponsor had not lost her linguistic cultural religious and social ties to Pakistan, and had visited often;
 - (v) no background country information was submitted in support of generalised complaints about poor education and a lack of employment in Pakistan, in particular there was no evidence at all that work in the sponsor’s chosen field would not be available in Pakistan.
19. Those observations were made by the UT in a decision dated 21 September 2020, yet in the bundle of evidence prepared for the hearing before me, there has been no meaningful attempt on the part of the sponsor or the appellant’s legal representatives to address these matters or submit further evidence in relation to the issues of concern identified.
20. The sponsor’s recent witness statement confirms that she continues to meet the requirements of the Rules save for the eligibility

relationship requirement. She also states that her family life with her husband has been significantly impacted. That statement entirely fails to explain why the sponsor feels unable to relocate to Pakistan. Ms Patel elected not to ask any questions in examination in chief. The only evidence before me was therefore that contained in the sponsor's initial statement in which she states that she has deep rooted connections to the UK and cannot reasonably be expected to uproot to Pakistan "owing to the fact that Pakistan is a country suffering from poverty, rampant corruption, weaker foreign policies, terrorism, water shortage, inflation, a devalued currency unemployment and low education".

21. I invited the sponsor to explain why she did not wish to live in Pakistan. She said that she had been in the UK since a child and had completed all her education here. She was at the peak of her career and was hoping to do a clinical psychology doctorate. She added that she did not feel that she would be able to assimilate into Pakistan. During re-examination she clarified that she is currently employed both as a trainee psychological well-being practitioner and as a domestic abuse support worker. When she was asked about contact with her father who remained living in Pakistan, she said they mainly had cordial contact over the telephone and the reason for this was because she had been living in the UK since 2008 and had not had much contact with him.
22. The remainder of the bundle does not contain any evidence in support of the sponsor's claim that she would find it difficult to assimilate in Pakistan and largely comprised information relevant to the sponsor's employment, finances and accommodation (which are not in dispute).
23. There is no updated witness statement from the appellant. I note that he accepted in his 2019 statement that he overstayed in the UK after his visa was revoked, but voluntarily returned to Pakistan on 7 June 2018. The appellant has therefore not sought to deny the UT's observation that the relationship commenced when he was an overstayer. That is clear from the evidence before me: he left the UK because he was an overstayer - their relationship had clearly begun before he left (and when he was an overstayer) as explained by the sponsor in her evidence.
24. The available evidence on the sponsor's assertion that she cannot relocate to Pakistan is therefore very limited. I have considered what evidence there is carefully, together with the information contained in the COIS and reach the following findings of fact. I accept that the sponsor gave broadly credible evidence save that she has overstated and overgeneralised the challenges she would face in Pakistan. I accept that she has genuine concerns that she will find it difficult to assimilate into Pakistan bearing in mind the time that she has spent in the UK with her mother and siblings and her strong private life here, in particular her educational background and aspirations as well as her career. I accept that her employment is very important to her and that she has done very well thus far in achieving the education and

employment that she is enjoyed. However, there is very little evidence in support of the vague proposition that it would be very difficult for her to find suitable employment in Pakistan. I acknowledge that there is far more discrimination against women in Pakistan, as explained in the COIS. However, the COIS makes the point that the status of women in Pakistan differs and is dependent upon many factors. This sponsor comes from a family who have supported her education and employment. On her own evidence her husband's family in Pakistan and her own father live in relatively comfortable circumstances and clearly value education. Indeed, the appellant has been educated to Masters level in the UK, probably at considerable expense. She has not described any antagonism on the part of her husband's family toward her and said that she stays with them and not her father when she visits Pakistan. She has no fears for her own safety or security in Pakistan.

25. When the evidence is considered holistically, I am satisfied that the appellant's family will be entirely supportive of the sponsor generally and specifically in relation to her employment and education. Whilst the sponsor may find it initially difficult to return to Pakistan, she will have the support of her husband and his family. She is determined, very well qualified and has ample work experience. I have not been taken to any country background evidence to support the submission that this particular sponsor will be unable to access the employment and further education she seeks. I am satisfied that there are no clearly evidenced cogent obstacles to the relationship between the appellant and the sponsor continuing in Pakistan and it would be reasonable for family life to be enjoyed there.
26. I accept, as submitted by Ms Patel, that relocation to Pakistan will mean the end of the pathway to settled status for this appellant and all the benefits residence in the UK brings. This is a substantial disadvantage to relocation for this sponsor who has already contributed considerably to UK society through her education and employment. However, I do not accept the submission in Ms Patel's skeleton that if the sponsor has to return to Pakistan "her time in the UK and the leave she has been granted hitherto would be worthless". The sponsor's time in the UK has been used particularly well and that is to her enormous credit. She has demonstrated that she has been able to assimilate into an entirely different culture and has built resilience along the way; she obtained a first-class honours degree in psychology in June 2008; she has secured important employment which has involved helping others including victims of domestic abuse. These matters are likely to serve her in good stead upon any return to Pakistan.
27. I now address the pros and cons relevant to the Article 8 proportionality balancing exercise by analysing my findings together with the undisputed aspects of this case.
28. Factors militating against entry clearance being granted are as follows: (i) the appellant clearly does not meet an essential

requirement of the Rules. This is not because of a lacuna or anything inadvertently missing from the Rules but a reflection of the Secretary of State's policy that those entitled to enter the UK on the basis of their partnership should be limited to those with a more permanent connection to the UK. The failure to meet the Rules attracts considerable weight; (ii) whilst the sponsor may find relocation to Pakistan initially difficult and disappointing, the evidence available and the supportive family she will be living with, are such that it would be reasonable for her to do so; (iii) whilst it is to the appellant's credit that he departed voluntarily from the UK, he has accepted that he was in the UK unlawfully as an overstayer when he formed a romantic relationship with the sponsor; (iv) at the time of that relationship and the marriage, the sponsor knew that she had limited leave to remain and her pathway to settlement in order to meet the requirements of the Rules was some nine years away.

29. Factors mitigating in favour of entry clearance being granted are as follows: (i) whilst the sponsor is not settled, she is on the 'pathway' to settlement, and will be entitled to apply for ILR after 10 years of DL. She is currently at the half-way point having accrued five years DL since April 2017. It will be a substantial disadvantage to her to be deprived of the benefits of residence with a view to settlement in the UK; (ii) the sponsor has lived here for a lengthy period and established a strong private life here particularly in terms of her education and her employment; (iii) the sponsor has a family life in the UK with her mother and siblings; (iv) the appellant meets the language, accommodation and financial requirements of the Rules - the appellant is most unlikely to be a burden to taxpayers and is likely to integrate well given the sponsor's circumstances and his background and history.
30. Drawing the threads above together, I consider that the factors against the grant of entry clearance outweigh those in favour. Whilst the loss of a chance to obtain settled status through relocation to Pakistan and the disruption to the sponsor's private life in the UK are weighty factors, there are no other strong or compelling factors. The factors at the other end of the scale carry are particularly strong, in particular, the public interest in immigration control and the circumstances in which the relationship began. Further, this is not a case in which family life between the appellant and sponsor cannot reasonably be enjoyed in Pakistan. Having conducted the relevant balancing exercise in my judgment the factors against entry clearance clearly outweigh the factors in favour.
31. In all the circumstances, I find the decision to refuse entry clearance is not disproportionate.

Decision

32. The decision in the appeal is remade as follows: the appeal is dismissed on human rights grounds.

Signed: *UTJ Plimmer*
Upper Tribunal Judge Plimmer

Dated:
19 August 2022