



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001880
First-tier Tribunal No: HU/50930/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 26 May 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

The Secretary of State for the Home
Department

Appellant

Chaudhary Muhammad Kashif Siddique
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr. S. Walker, Senior Presenting Officer.

For the Respondent: Mr Z Nasim, of Counsel instructed by Lee Valley Solicitors LTD.

Heard at Field House on 5 May 2023

DECISION AND REASONS

1. By a "Decision and Directions" (signed on 13 February 2023 and served on the parties on 16 March 2023) (the "EOL Decision"), I set aside the decision of Judge of the First-tier Tribunal S Borsada (hereafter the "judge") who, in a decision promulgated on 4 October 2021, allowed the appeal of Mr Siddique, a national of Pakistan born on 15 December 1982 (hereafter the "claimant"), on human rights grounds against a decision of the Secretary of State of 25 February 2021 to refuse his application of 27 February 2020 for leave to remain on human right grounds.
2. Terms defined in the EOL Decision have the same meaning in this decision.
3. The appeal was listed before me on 5 May 2023 for the decision on the claimant's appeal against the Secretary of State's decision to be re-made. Para 63 of the EOL Decision set out the ambit of the re-making of the decision on the claimant's appeal.
4. Before the hearing commenced, I questioned whether the claimant should address whether he could be expected to return to Pakistan and make an entry clearance application in order to join the sponsor. Mr Nasim objected. Mr Walker informed me that he did not wish to raise this issue. This was no doubt because the respondent had not raised this issue in the decision letter dated 25 February 2021 as Ms Cunha pointed out at the hearing on 8 February 2023.

5. At the commencement of the hearing, Mr Nasim informed me that oral evidence would not be called. I then heard detailed submissions from Mr Nasim.
6. Mr Walker then conceded the appeal and asked me to allow the appeal for the following reasons: (i) that there were insurmountable obstacles to family life continuing in Pakistan between the claimant and the sponsor, bearing in mind the judge's finding that the evidence of the claimant and the sponsor about the difficulties that they would experience in Pakistan if they were to live in Pakistan in order to enjoy their family life was credible; (ii) that the weight to be given to the state's interests in immigration control is reduced by reason of the fact that the judge found that the claimant had not used a fraudulently-obtained ETS certificate in a previous application for leave to remain; and (iii) the fact that the Secretary of State had maintained the deception allegation against the claimant for a considerable period, over the course of two earlier appeals.
7. I therefore allow the appeal on the basis of the concession made by Mr Walker.
8. I should, however, say something about the issue I sought to raise before the hearing commenced. It appears to have been assumed by the representatives that the possibility of the claimant returning to Pakistan to make an entry clearance application in order to join the sponsor would necessarily have concluded the appeal against him. However, that was not a foregone conclusion in the particular circumstances of the instant case, i.e. that: (i) it is accepted that the claimant satisfies all of the requirements under the Immigration Rules for leave to remain as the spouse of the sponsor; it follows that, if he were to make an entry clearance application, he would succeed; (ii) that the only reason why his in-country application for leave to remain was refused under the Immigration Rules was that he had used a fraudulently-obtained ETS certificate in a previous application for leave to remain; (iii) that the judge found in the claimant's favour in relation to the deception allegation; and (iv) that the Secretary of State had maintained the deception allegation against the claimant for a considerable period, over the course of two earlier appeals. In these circumstances, it may well have been successfully argued that requiring the claimant to return to Pakistan to make an entry clearance application in order to comply with the procedural requirement to do so was disproportionate.

Decision

The making of the decision of the First-tier Tribunal involved the making of any error of law sufficient to require it to be set aside.

The Upper Tribunal re-makes the decision on the claimant's appeal against the Secretary of State's decision by allowing his appeal on human rights grounds (Article 8 ECHR).

Signed

Upper Tribunal Judge Gill

Date: 11 May 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.