



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-003487**  
**First-tier Tribunal No:**  
**HU/02400/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 04 December 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR MUHAMMAD FAZIAN**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms G Patel (Counsel)

For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

**Heard at Manchester Civil Justice Centre on 15<sup>th</sup> June 2023**

**DECISION AND REASONS**

1. The Appellant appeals, with permission, against a decision of the First-tier Tribunal dismissing his appeal against the Respondent's decision refusing to issue him with a decision granting him leave to remain in the UK on grounds of his family and private life.
2. I make no anonymity direction, none being requested or required.
3. The Appellant's immigration history is set out in the notice of decision. In brief, he arrived in the United Kingdom on 12<sup>th</sup> May 2011 on a student visa which was valid until 31<sup>st</sup> December 2012. On 4<sup>th</sup> July 2012, the Appellant submitted a Tier 4 application, the Appellant was granted leave to remain until 23<sup>rd</sup> November 2013. On 7<sup>th</sup> November 2013, the Appellant submitted a Tier 4 application. However, this was refused on 22<sup>nd</sup> June 2015. The Appellant lodged an appeal on 7<sup>th</sup> July 2015. This, however, was again dismissed on 5<sup>th</sup> January 2016. The Appellant stood appeal rights exhausted on 22<sup>nd</sup> January 2016. He remained in

the UK unlawfully thereafter. On 6<sup>th</sup> October 2016 he was issued with notice as an overstayer. He made an application for leave to remain on 20<sup>th</sup> October 2016 and it is the refusal of that application which has resulted in the present appeal.

4. The Appellant's appeal was heard by Judge Head of the First-tier Tribunal on 10<sup>th</sup> May 2021 at Hatton Cross. The judge considered the arguments put forward by the Appellant, namely, in relation to whether there were insurmountable obstacles to himself and his wife relocating to Pakistan. As the judge pointed out (at paragraph 24) the primary objection to the couple continuing their life in Pakistan related to the Sponsor, an English lady, although reliance was also placed on the difficulties the Appellant stated he would himself have on returning to Pakistan. The judge had regard to the relevant legal authorities (at paragraph 31) and also had regard to the FCDO travel issued by the UK government in relation to Pakistan. The judge concluded that although the couple may experience some difficulties in settling into society in Pakistan (at paragraph 47) and that some adjustments may be required, there was no very significant hardship involved for either the Appellant or his sponsoring wife (paragraph 47). The appeal was dismissed.
5. An application for permission to appeal was made by the Appellant which was initially refused by the First-tier Tribunal on 26<sup>th</sup> April 2022, which held that there was no confusion on the part of the judge in her interpretation of the FCDO advice in relation to whether there was a distinction between "travel" and "essential travel" in relation to Pakistan. However, permission to appeal was granted by the Upper Tribunal on 20<sup>th</sup> September 2022.
6. At the hearing before me on 15<sup>th</sup> June 2023, Ms Patel, appearing on behalf of the Appellant, submitted that in her discussions prior to the hearing with Mr Tan from the Respondent, it was agreed that there was indeed an error of law in the determination of the judge. Mr Tan went on to explain that at paragraph 32 of her determination the judge had gone on to take note of the Foreign, Commonwealth and Development Office ("FCDO") list of areas where it advises against "all travel" as well as "all but essential travel". The judge had gone on to say that she noted "that a number of areas of Pakistan are not included on either list". The judge then went on to add, "I find that the appellant and the sponsor would not be prevented from travelling to and residing in Pakistan generally and they are not advised against so doing by the FCDO". Thereafter, at paragraph 33 it was noted that the judge had reiterated her point that the FCDO advice relied upon did not indicate that the sponsor would be "unable to relocate to Pakistan". Mr Tan stated that in fact the FCDO advice concerning "all or essential" travel areas did cover the whole of Pakistan. The FCDO travel advice for instance, did not encourage travel to some areas in the north, and then also advised against "all but essential travel" to other areas. The remainder class of areas concerned those which were subject to a current assessment of Covid-19 risks. Therefore, the judge had erred in this respect.
7. Ms Patel went on to add that, as stated in the grounds of application (at paragraph 7) the FCDO advice expressly goes on to state that, "When we judge the level of risk to British nationals in a particular place has become unacceptably high, we'll state on the travel advice page for that country or territory that we advise against all or all but essential travel". This meant, contended Ms Patel, that the FCDO advice was that the risk to a person such as the Sponsor was indeed "unacceptably high" since all areas of Pakistan were covered either by "all" or "essential travel". Therefore this meant that the

judge's observations with respect to the evidence before her was perverse because she simply failed to apply the FCDO advice as intended, which was that the level of risk for a British citizen was considered "unacceptably high". Ms Patel also added that the issue was not whether the Sponsor would be able to live in Pakistan but whether in attempting to relocate there she would face insurmountable obstacles which were disproportionate. If the risks were "unacceptably high", and plainly as a British citizen she had been advised against such travel. In the circumstances, given the level of agreement between Ms Patel and Mr Tan, the appropriate course of action is for this appeal to be remitted back to the First-tier Tribunal to be heard afresh, given the extent of the fact-finding which is necessary to re-make the decision. It will be open then for the Appellant to furnish further fresh evidence. That being so, the remittal will be for a *de novo* hearing.

### **Error of Law**

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be heard afresh, with no findings preserved, pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b) before any judge apart from Judge Head.

**Satvinder S. Juss**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**2<sup>nd</sup> December 2023**