



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000938

First-tier Tribunal Nos: HU/53663/2023
LH/00248/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 19 June 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

The Secretary of State for the Home Department

Appellant

and

**Mohammed Tofiq
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms S Simbi, Home Office Presenting Officer
For the Respondent: Mr R De Mello, Counsel, Fountain Solicitors

Heard at Field House on 7 June 2024

DECISION AND REASONS

1. Mr Tofiq is a citizen of Pakistan whose date of birth is recorded as 1st February 1978. On 21st October 2022 he made application for leave to enter the United Kingdom as the spouse of a British citizen pursuant to Appendix FM of the Immigration Rules with reference to Article 8 of the European Convention on Human Rights. On 22nd February 2023 a decision was made to refuse the application.
2. By way of background, Mr Tofiq and his wife married in Pakistan in January 1998. From November 1998 they lived together in the United Kingdom. They have three offspring, now all adults, the youngest being 20 at the time of Judge Pinder's decision. As a result of his conviction in 2016 the Secretary of State took steps to deport Mr Tofiq, but these were prevented as a result of a successful appeal to the First-tier Tribunal leading to him being granted leave to remain. An appeal by the Secretary of State to the Upper Tribunal was dismissed.

3. On 7th January 2020, at a time when he still had leave, Mr Tofiq travelled to Pakistan intending to return on 26th March 2020. However, his return was frustrated by COVID-19 restrictions and other matter, such as his mother being unwell. He then had difficulties renewing his visa to enter the United Kingdom.
4. In refusing Mr Tofiq's application, on 22 February 2023, the Secretary of State noted that Mr Tofiq, on 31st October 2016, had been convicted of a criminal offence for which he had been sentenced to fifteen months' imprisonment and required to sign the sex offenders register for seven years.
5. S-EC.1.4.(b) of Appendix FM provides:

"The exclusion of the appellant from the UK is conducive to the public good because they have:

(b) been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 12 months but less than 4 years, unless a period of 10 years has passed since the end of the sentence; ..."
6. Having regard to the above, and the provision of EC-P.1.1.(c) which provides that, "the appellant must not fall for refusal under any of the grounds in Section S-EC: Suitability–entry clearance," and unwilling to exercise any discretion, the Secretary of State refused the application under the Rules and on human rights grounds contending that there would not be unjustifiably harsh consequences even after having regard to the best interest of any relevant children as a primary consideration (Section 55 of the Borders, Citizenship and Immigration Act 2009).
7. Mr Tofiq appealed to the First-tier Tribunal and on 24th January 2024 his case was heard by Judge of the First-tier Tribunal Pinder sitting at Birmingham. In a decision dated 9th February 2024 Judge Pinder allowed the appeal on human rights grounds.
8. Not content with that decision, by Notice dated 27th February 2024 the Secretary of State sought permission to appeal to this Upper Tribunal. The grounds, acknowledging Mr Tofiq's conviction for sexual assault against a female but without penetration, were that Judge Pinder had failed to give adequate reasons for his findings on material matter on the basis, in summary, that:
 - (a) he had given too much weight to the earlier findings of Judge of the First-tier Tribunal Ford, at a previous hearing, who in a decision dated 24th December 2017 had found that Mr Tofiq's absence had "tipped the family into crisis" when those findings had been made six and a half years ago with the family now having moved on and the three children now adults;
 - (b) refusal was mandatory;
 - (c) finding unjustifiably harsh consequences would arise from either the Sponsor living in Pakistan with Mr Tofiq or living without him in the United Kingdom without giving any reasons for so doing, particularly so because though Mrs Tofiq suffered from a medical condition there was no consideration or finding that she could not find the necessary treatment in Pakistan.

9. On 6th March 2024 Judge of the First-tier Tribunal Buchanan granted permission, thus the matter comes before me.
10. Before dealing with any argument in this case, I invited Ms Simbi to explain to me, given that this was a human rights appeal, how the public interest was changed by a Mr Tofiq leaving the United Kingdom rather than him simply not having done so. Had he remained in the United Kingdom no-one would have sought, it would appear, to interfere with his Article 8 rights. All he had done was get on with his life to go and visit his mother.
11. Ms Simbi quite properly accepted that there really was no difference. In those circumstances it seems to me that there really is no material error of law to be found in the decision of Judge Pinder, though I should observe that having read the decision as a whole, it seemed to me that the complaints made in the grounds were no more than disagreement with findings of fact that were open to the Judge.
12. I also note, as an aside, that in this particular case, the refusal letter was rather lacking in explaining what the Secretary of State's case actually was. Be that as it may, Ms Simbi did not pursue the matter with any vigour and indeed, but for my early intervention, told me that she was going to say that it was a matter for the Tribunal in any event; a short hand submission well understood by this Tribunal..

Notice of Decision

13. In all the circumstance and given what Ms Simbi had to say, it is not necessary for me to expand on the reasons for dismissing the appeal, other than to say that looking at the decision as a whole, the judge made findings, as I have said, that were open to him, and the grounds do not point to any material error of law. This appeal is dismissed. The Decision of the First-tier Tribunal shall stand.



**Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber**

11 June 2024