



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/10389/2017

THE IMMIGRATION ACT

Heard at Field House

**Decision & Reasons
Promulgated**

On 22nd November 2018

On 6th December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Zahid [N]

(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Shaw Counsel instructed by Cranbrook Solicitors

For the Respondent: Ms Isherwood Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Housego promulgated on the 22nd August 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's protection claim on the grounds of asylum, humanitarian protection and Articles 2 and 3 of the ECHR and the appellant's human rights claim based on Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Hollingworth on 1st October 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. Whilst the appellant had claimed asylum, the grounds of appeal are concerned with the findings in respect of Article 8. There was no challenge to the findings in respect of protection. Ms Shaw on behalf of the appellant accepted that the appeal to the Upper Tribunal was concerned with Article 8 alone.
5. The grounds raise the following issues: -
 - a) The judge materially erred in that he failed to consider the appellant's Article 8 rights in the UK.
 - b) In considering whether insurmountable obstacles exist as defined in paragraph EX.2 of Appendix FM) the judge failed to consider material evidence. which renders the findings of fact and decision flawed.
 - c) The judge failed to consider the effect of the removal of the appellant on his family who are British nationals.
 - d) The grounds challenge the finding by the judge that the appellant's status in the UK was precarious, on the basis that the appellant has had leave to be in the UK throughout and that he had always made applications in time to extend his leave.
6. In paragraphs 10 and 11 of the grounds of appeal it is asserted that the appellant's status in the United Kingdom is not precarious and seeks to rely upon the case of *Agyarko v SSHD* [2017] UKSC 11. It is suggested because the appellant has made applications for further leave his status in the UK was far from precarious. The issue has recently been dealt with in the case of *Rhuppiah* [2018] UKSC 58 paragraph 44, in which Lord Wilson stated:-

"44 The answer to the primary question posed by the present appeal is therefore that everyone who, not being a UK citizen, is present in the UK and who has leave to reside here other than to do so indefinitely, has a precarious immigration status for the purposes of section 117B(5)."
7. The appellant did not have indefinite leave. The judge on the basis of the guidance given was not in error by treating the appellant's status as precarious for the purposes of Section 117B(5).
8. The grounds challenge the judge's findings that there was and would be no hostility to the appellant on account of his having married a lady, who converted to Islam and his having failed to marry according to a longstanding family engagement. The finding by the judge that the family would not face hostility on return is challenged on the basis that there was evident hostility by the appellant's family in Pakistan to his marriage.

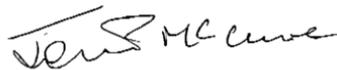
9. The grounds rely on the fact that the judge at paragraph 41 has accepted that the uncle of the appellant made an angry telephone call, which the appellant's spouse answered. Whilst it is correct to acknowledge that the judge has made a finding that that telephone call was made, the judge in paragraph 45 has concluded that, whilst the uncle was angry at not being consulted about the appellant's marriage, that was a long way from presenting a risk or hostility to the appellant and his spouse otherwise. The judge has considered the nature of the telephone call and has made findings which take such into account.
10. Further the judge noted that the appellant's family in the UK were supporting the appellant and that, although the appellant's parents were dead, the appellant was on good terms with his siblings.
11. The judge also noted that background information established that whilst former Christian men marrying Muslim women may face discrimination and even hostility, the same did not apply to Christian women converting to Islam and marrying Muslim men. There was no evidence of such women facing hostility or discrimination from society in general.
12. In the circumstances the judge for the reasons set out in paragraph 45 and paragraph 53.9 was entitled to conclude that there was no family or societal hostility or none of significance. Thereafter having considered the facts the judge was entitled to conclude that the appellant and his spouse would have support in Pakistan and otherwise could settle in Pakistan. The judge was entitled to conclude that the appellant and his spouse could in any event relocate and the same would not be unduly harsh. The judge was entitled to come to the conclusions that he did on the basis of the evidence.
13. The grounds of appeal also seek to argue the medical conditions of the appellant's spouse. It is correct to say that the judge at paragraph 53.13 states that neither the appellant nor his spouse have any medical conditions. Thereafter the judge finds that there are no insurmountable obstacles to family life continuing in Pakistan, a factor to be considered under article 8 within the Immigration Rules and under Section 117B.
14. There is in the documentation evidence that the spouse of the appellant had had a miscarriage some time previously and that she was suffering from anxiety and depression.
15. There is no evidence of any ongoing problems referred to with regard to the miscarriage.
16. With regard to the depression and anxiety, whilst the spouse was receiving prescription medicines and there is reference in the documents to her having six one to one low level therapy sessions, the depression and anxiety are triggered by the prospects of the appellant being removed from the UK. No reference was made to any underlying long term or pre-existing condition. The documents further refer to the spouse being referred for a more in-depth therapy session.
17. Whilst it has to be acknowledged that the judge has made no reference to the health conditions, the conditions have been brought about by the uncertainty of the appellant's position. One can appreciate the fact that the

spouse of the appellant is concerned about the immigration status of the appellant. One can appreciate that those concerns inevitably will lead to anxiety and depression.

18. There is however no evidence of long-term depression.
19. In the circumstances given the general background evidence as to the availability of medical treatment in Pakistan, the conditions referred would not come anywhere near constituting insurmountable obstacles. Whilst clearly adjustments would have to be made if the appellant were returned to Pakistan and his spouse in order to maintain family life had to travel to Pakistan to live with him, given that medical support is available at a price in Pakistan, the conditions described by the spouse can be helped by treatments in Pakistan itself. The conditions do not as such constitute insurmountable obstacles to family life continuing in Pakistan.
20. Accordingly whilst it has to be acknowledged that the judge has failed to refer to the conditions, that failure is not material in the circumstances and as such does not constitute a material error of law.
21. There is accordingly no material error of law in the decision.

Notice of Decision

22. I dismiss the appellant's appeal.
23. I do not make an anonymity direction



Signed

Date 30 November 2018

Deputy Upper Tribunal Judge McClure