



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

Appeal Number: HU/05578/2020

THE IMMIGRATION ACTS

**Heard at Manchester CJC (via Microsoft Teams)
On 12 August 2021**

**Decision promulgated
On 14 September
2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LARAIB MURTZA

(Anonymity direction not made)

Respondent

Representation:

For the Appellant: Mr Walker, a Senior Home Office Presenting Officer.

For the Respondent: Mr E Waheed instructed by Whitefield Solicitors Ltd.

DECISION AND REASONS

- 1.** The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Williams promulgated on 22 March 2021 in which the Judge allowed the appellant's appeal on human rights grounds.
- 2.** The appellant is a citizen of Pakistan born on 16 June 1993. His application for leave to remain in the United Kingdom as the

spouse/partner of a British citizen was refused by the Secretary of State.

Background

3. The Judge's finding the appellant can meet the Immigration Rules is set out at [10 - 16] and that the removal of the appellant is not proportionate pursuant to Article 8 ECHR at [18 - 30].
4. Permission to appeal was granted by Judge of the First-tier Tribunal the operative part of the grant being in the following terms:
 2. The grounds assert that the judge erred by giving inadequate reasons; and by failing to attach due weight to the factors set out in section 117 B.
 3. On the one hand, it could be argued that the findings made by the judge were open to the judge on the facts and evidence available. On the other hand, it is open to argument that the judge may have placed inadequate weight on the public interest. It does seem that the factors outlined by the judge in justifying and allowing the appeal are factors common in many appeals and not exclusive to this appellant. In my view, it must be explored further as to whether the judge has given inadequate weight to the public interest in this case."

Error of law

5. There are two difficulties for the Secretary of State with this appeal. The first is that there is no challenge in the ground seeking permission to appeal to the findings of the Judge between [10 - 16] in which it was found the appellant can satisfy the requirements of the Rules. The Immigration Rules set out the Secretary of State's own view of what is required to enable a person to succeed with their application. The question whether there are insurmountable obstacles requires a judgement by the decisionmaker and if such is made out it follows that the public interest in removal is weakened, absent countervailing circumstances.
6. This is a human rights appeal and not against the decision under the Rules as that kind of challenge has not been available since the 2014 amendments, but ability to meet the Rules is a factor that is relevant to the proportionality assessment.
7. The second issue is that the Judge refers to relevant case law, carries out proper factual analysis, balancing exercise, refers to relevant case law, and makes a specific finding that if the appellant left the United Kingdom to make a fresh application to re-enter lawfully as a spouse/partner that application will be likely to succeed.
8. The Secretary of State seeks to challenge the final conclusion reached by the Judge without identifying any material error of law in the steps taken by the Judge in identifying factors which reduced the weight to be given to the public interest in his removal.
9. The judge granting permission pose the question whether the Judge had given due weight to the public interest, but I find it has not been established that the judge gave inadequate weight to the public interest in this case.

- 10.** As the judge granting permission noted, it could be argued that the findings were open to the Judge on the facts and evidence available. The Court of Appeal has cautioned appellant judges, including their own, of not interfering with the decision of a Court below unless legal error material to the decision under challenge is made out. In this case the Secretary of State has failed to discharge the burden upon her to prove this is so.
- 11.** The decision to allow the appeal is clearly within the range of those available to the Judge, especially in light of the unchallenged finding that the appellant is able to satisfy the Immigration Rules. The Secretary of State may not like that outcome but that is not the applicable test.

Decision

- 12. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.**

Anonymity.

- 13.** The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 12 August 2021