



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

Appeal Number: IA115522015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 6 June 2016**

**Decision given orally at the hearing**

**Decision &  
Promulgated**

**On 8 June 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

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

Appellant

**and**

**MR MUHAMMAD ADEEL**

Respondent

**Representation:**

For the Appellant: Ms A Brocklesby-Weller, Home Office Presenting Officer

For the Respondent: Ms A Jones, Counsel, instructed by Farani. Javid. Taylor Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals against a decision of Judge of the First-tier Tribunal Boardman, who in a determination promulgated on 16 November 2015 allowed the appeal of Mr Muhammad Adeel on human rights grounds. Although the Secretary of State is the appellant before me I will for ease of reference refer to her as the respondent as she was the

respondent in the First-tier and similarly I will refer to Mr Muhammad Adeel as the appellant.

2. The appellant is a citizen of Pakistan who came to Britain as a student in February 2011. He had leave to remain in that capacity until 13 October 2014. While he still had leave to remain, on 9 October 2014, he made an application for leave to remain on private and family life. He had been married on 16 April 2014 and the marriage was a central part of the application that was made. It is, however, of note that no marriage application with the appropriate supporting evidence was made.
3. The judge did consider whether or not the appellant could meet the requirements of the Immigration Rules. He found that he could not. Moreover, the judge found in terms that there were no insurmountable obstacles to the appellant's wife living with him in Pakistan nor indeed were there any insurmountable obstacles which would stop the appellant making an application for leave to enter from abroad.
4. However, having found that the appeal could not succeed within the marriage Rules the judge then went on to consider the appellant's rights under Article 8 of the ECHR. He set out a number of relevant factors. He placed weight on the private life built up here but did not seem to take into account the fact that the appellant's private life built up here was built up at a time while his leave to remain was precarious. Indeed, of course when he had entered Britain he had entered on the basis that he would be returning to his own country at the end of his studies. There was nothing to indicate that he would have had any intention or any right to remain for any indefinite period.
5. The judge, as I said, took into account a number of factors but it is argued by the Secretary of State that his consideration of the proportionality aspects of the rights of the appellant under Article 8 were not properly considered, particularly taking into account the findings of the judge that the appellant not only could not meet the Rules but also that there were no insurmountable obstacles to his returning and continuing married life in Pakistan.
6. The reality is that the judge in reaching his conclusion ignored not only the provisions of Section 117 of the 2014 Act but also the terms of the Rules and the terms of Section EX.1 of Appendix FM. He also, in my view, ignored relevant case law including the judgment of the Court of Appeal in **SS (Congo) [2015] EWCA Civ 387**, which makes it clear that a near miss does not entitle someone to leave to remain under Article 8 and furthermore that it is important to place particular weight on the necessity of relevant immigration control which itself requires that the rules are met.
7. The terms of the judgment in **SS (Congo)** state that a system of immigration control should to be workable, predictable, consistent and fair as between one applicant and another. That is not the case where one is

entitled to leave to remain on the basis of marriage when the marriage Rules are not met and where there are no exceptional or compelling factors that mean that it would be particularly difficult for the individual to either make an application from abroad or indeed for the parties to the marriage to live in the country of the applicant. Particularly given that the Judge found that there were no insurmountable obstacles to the appellant's family life continuing abroad and did not indicate that he considered that there were any exceptional or compelling factors which would mean that it would be appropriate to allow the appeal outside the immigration rules I consider that there were clear and material errors of law in the decision of the judge.

8. Particularly having found that there were no insurmountable obstacles the judge erred in, somehow ignoring that finding and deciding that leave to remain should be granted. I therefore set aside his decision.
9. The appeal will now be remitted to the First-tier to make a further decision and my decision is that the appeal is allowed to the extent that it is remitted to the First-tier to be heard afresh save that the findings of the Judge in paragraphs 1 through 29 of the determination are preserved.

### **Notice of Decision**

The appeal of the Secretary of State is allowed to the extent that the decision of the Judge in the First-tier is set aside and the appeal is remitted to the First-tier.

### **Directions**

The appeal is to be heard at Taylor House, time estimate 2 hours.

Signed:

7 June 2016

Judge of the Upper Tribunal McGeachy