Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/07772/2019
HU/07775/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 3 December 2019	**On 17 December 2019**

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

MD – First Appellant
MMM – Second Appellant
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Amar Alyas, Counsel instructed by Nasim & Co Solicitors
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Garratt who, following a hearing on 31 July 2019, dismissed the appeal of the first and second appellants against the refusal by the respondent of their human rights claims.

2. The judge noted that the first appellant is a citizen of Pakistan. He was born in 1986. The second appellant is his son, born in 2016, also a citizen of Pakistan.

3. The basis of the human rights claim advanced by the appellants was that they enjoyed family life with the wife of the first appellant, whom the judge called the sponsor, and with the youngest son of the partnership between the first appellant and the sponsor, a son born in April 2019. The sponsor and the youngest son are citizens of Pakistan and have leave to remain in the United Kingdom until April 2021.

4. The reasons why the claims of the appellants were refused by the respondent were set out by the judge. The first appellant had come as a visitor to the United Kingdom in 2009. He then applied for leave to remain on human rights grounds, which was refused in 2010. An appeal having been struck out in January 2011, he then applied for an EEA residence card as a family member. That was refused by the respondent in June 2018 and subsequent attempts to appeal that decision met with no success.

5. It was in July 2018, the first appellant applied for a permanent residence card as a spouse, and that was refused, as was a subsequent application in October 2018.

6. The application that formed the basis of the appeal before the First-tier Tribunal Judge was made in November 2018.

7. The respondent considered the application under the Rules. The conclusion reached was that the first appellant did not qualify under paragraph 276ADE. The second appellant also failed under the Rules, including Appendix FM. The respondent considered whether there were exceptional circumstances, such that a refusal to grant the applications would be unjustifiably harsh. In that regard the respondent treated the best interests of the second appellant as a primary consideration.

8. The first appellant claimed to be unable to return to Pakistan because of his established family life in the United Kingdom and his adoption of the British way of life. However, the respondent considered that the first appellant and the sponsor could return to Pakistan, even though the sponsor and the youngest child had leave to remain in this country until 2021. The sponsor is a citizen of Pakistan who would be, in the respondent's view, familiar with the life, language and culture there. It would also mean that the family unit would be kept together, albeit in Pakistan. The best interests of the second appellant would be to remain with his parents and therefore to go to Pakistan with them.

9. The judge noted the submissions and evidence made at the hearing. The judge recorded in particular that the first appellant claimed he had made what he described as an innocent mistake in not giving details of his conviction for a criminal offence when filling in the application. The judge was not satisfied with the first appellant's stance on that issue. That is plain from the judge's finding at paragraph 27. The first appellant had said that he was unaware he had to declare all convictions. The judge noted that it was specifically indicated on the application form that all convictions, whether spent or not, should be disclosed. The first appellant sought to blame his previous legal adviser but the judge was unpersuaded

by that as an excuse, particularly since the legal adviser had not been confronted with the assertion.

10. The judge considered the first appellant's submission that he and the sponsor could not live in Pakistan. The sponsor had lived in the United Kingdom since 2011. If she remained there, she would be able to obtain indefinite leave to remain in 2021, when she would have completed ten years' lawful residence in the United Kingdom. There were problems in going back to Pakistan as a family because the sponsor's family there had taken against her for various reasons which would cause the sponsor and the first appellant difficulties.

11. The first appellant said he had not worked in Pakistan before coming to the United Kingdom. His father had supported him. He told the judge that he could not work in Pakistan as he had been away from the country for a period of time. As far as problems with the sponsor's family were concerned, the first appellant was asked why he could not live in a different city in Pakistan. The appellant replied that his sponsor thought she would be harmed anywhere in that country and would not have financial assistance.

12. The sponsor also gave evidence. She was asked about the fact that in an earlier appeal involving herself she had not made reference to any concerns regarding hostility from her family in Pakistan as a reason why she could not return to that country. She agreed that she had not mentioned the start of her new relationship when she was before the judge in her appeal hearing. She said she had not been asked about it. She was asked if, when she made her renewed application to remain in April 2018, she had informed the respondent that she in fact had a new husband and child. She said her solicitor had told her that, as her new marriage was not valid in the United Kingdom, there was no need to mention it, as the marriage was not recognised. The sponsor and the first appellant had, however, gone through an Islamic marriage ceremony.

13. Having set out the submissions of the parties, the judge then moved to the conclusions and reasons. The judge noted the submission on behalf of the appellants that they could not succeed under the Immigration Rules. The judge was not persuaded of the first appellant's excuse for failing to disclose his conviction. I have dealt with that already.

14. The judge then turned to what he considered to be the main issue in the case, which was whether there were very significant obstacles to the appellants being able to live satisfactorily in Pakistan. The judge reminded himself of the caselaw relating to the expression "very significant". The judge took note of Mubu (Immigration appeals - res judicata) *[*2012*]* UKUT 00398 *(IAC)*. The sponsor had not made reference in previous proceedings to any difficulties emanating from her family in Pakistan and considered that this was relevant to her credibility. Indeed, the judge found that on a balance of probabilities he could not be satisfied that any such opposition existed or, even if it had, that it had led to threats of serious harm. Even if the judge were wrong in that conclusion, he observed at paragraph 31 that there was no evidence,

apart from assertions, to show the existence of any opposition on the part of the brothers of the sponsor.

15. At paragraph 32, the judge turned to length of residence in the United Kingdom and educational matters. The judge explained why he did not find that these amounted to very significant obstacles making the best interests of both of the children a primary consideration. He was satisfied they were young enough to be able to adapt to change and it was clearly in their best interests to be with their parents. No significant medical issues had been put forward. Although the first appellant claimed never to have worked in Pakistan, he had worked in the United Kingdom and that experience, in the judge's view, would stand him in good stead on return. The sponsor was educated and she also, according to the judge, would be able to obtain employment if considered appropriate.

16. Paragraphs 33 and 34 of the decision read as follows:-

> "33. For the reasons I have given and applying the five-stage process **Razgar** I am unable to conclude that the decision of the respondent is disproportionate. I reach that conclusion bearing in mind that I accept that the sponsor and the youngest child have leave to remain until 2021 but that, of itself, is not a very significant obstacle to all parties returning together.
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> 34. As to the application of Section 117B of the Nationality, Immigration and Asylum Act 2002 to the circumstances of this case I point out that neither child is qualified within the meaning of Section 117D(1). It is also my conclusion that the appellants' immigration status in the United Kingdom has been precarious throughout and so little weight can be attached to a private life established at that time."

17. The written grounds of application for permission to appeal contended as follows. First, it was said that the judge took what was described as a narrow view on the issue of the first appellant failing to disclose a previous conviction in his application for leave. The first appellant acknowledged that it was an innocent mistake but the judge failed to apply what are said to be "principles of fairness, hence the decision is unreasonable and not in accordance with the law".

18. Various cases were put forward in support of this ground, including Patel (revocation of sponsor licence – fairness) [2011] UKUT 00211 (IAC). What the grounds failed to note however is that what the Court of Appeal has had to say about fairness in the immigration context has considerably developed since 2011. There is little scope in the circumstances of the present case for contending that the respondent or indeed the judge failed to afford procedural fairness to the appellant, in concluding as they did on the issue of the application form (see particularly Pathan v Secretary of State for the Home Department [2018] EWCA Civ 2103).

19. Mr Alyas, presenting the best possible case that could be put in relation to the written grounds, submitted that the first appellant's explanation should have been

accepted by the judge. I respectfully disagree. As I have set out, the judge was unpersuaded by the explanation and has given sufficient reasons for that finding.

20. The written grounds next contend that the judge made factual errors in not appreciating that the parties were unmarried, as their Islamic marriage certificate was not recognised as a valid UK marriage. There is nothing in that ground and Mr Alyas was, in my view, correct not to pursue it before me. The judge was plainly troubled by the fact that, when the sponsor made an application for leave, she did not refer to her new relationship. Whether the Islamic marriage was recognised as a marriage under the law of England and Wales is not the point; the Islamic marriage was presumably of importance and significance to the sponsor and the first appellant.

21. The written grounds seek to challenge the way in which the judge addressed the issue of potential difficulties in Pakistan for the appellants' immediate family by reference to alleged family hostility in Pakistan towards the sponsor. I have to say that I find these passages of the written grounds difficult to comprehend. It is manifest in my view that the judge was entitled to have regard to what the sponsor had or had not done in previous proceedings concerning her own appeal. She obviously knew that those proceedings had taken place and she also knew what had been said by her in them.

22. The final aspect of the written grounds which Mr Alyas sought to develop concern the issue of whether the judge materially erred in law in what he said in paragraphs 33 and 34 of the decision, concerning proportionality. In granting permission, the First-tier Tribunal Judge said it was arguable that the judge who wrote the decision had failed properly to consider whether the respondent's decision amounted to a disproportionate breach of the Article 8 rights of the appellants.

23. I have to say, with respect, that I find this statement surprising. It is clear from his careful decision that the judge properly reached the conclusion at paragraphs 33 and 34 that the removal of the appellants from the United Kingdom would not be disproportionate. The judge analysed in detail the position of the family as whole, were the respondent's decision to be upheld. The judge gave clear reasons why in his view the family could relocate to Pakistan, without facing very significant obstacles.

24. The fact that the sponsor and the youngest child have leave to remain until 2021 is nothing to the point. That they have been granted leave is not a statement on behalf of the United Kingdom government that they are expected to remain in this country. The sponsor plainly wishes to remain here in order that she might achieve the requisite period of residence to make an application for indefinite leave to remain. But that has no bearing on this appeal. On the contrary, it is no more than the wish of the sponsor and her family to make the United Kingdom their country of residence. Such a wish is a matter which the Strasbourg Court has repeatedly said is not within the ambit of Article 8 of the ECHR, as properly construed.

25. The judge's conclusion that the whole family could and should return to Pakistan is not only one he was entitled to reach but, in my view, the only rational conclusion that could be reached. It cannot be said that, in so finding, the judge committed any legal error.

Decision

The appeal is dismissed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 12 December 2019

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber