



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

Appeal Number: HU/11350/2018

THE IMMIGRATION ACTS

Heard at Field House

On April 17, 2019

**Decision & Reasons
Promulgated
On May 1, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR SOHAIL SHAHZAD
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel instructed by David Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Pakistani national who entered the United Kingdom as a visitor in December 2010. Any leave that he had would have expired on June 2, 2011.
2. On March 10, 2017, the appellant lodged an application for asylum but this was refused by the respondent on September 8, 2017. No appeal appears to have been lodged by him in respect of this decision.
3. On October 31, 2017 the appellant lodged an application for leave to remain under Appendix FM of the Immigration Rules based on his

relationship with his partner, Rehmiah Khatoon Iqbal, but this application was refused by the respondent on March 12, 2018.

4. The appellant appealed this decision on May 22, 2018 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Spicer on December 17, 2018.
5. In a decision promulgated on January 7, 2019 the Tribunal found the appellant and his partner were not in a genuine and subsisting relationship and consequently did not intend to live together permanently. Alternatively, the Judge considered the case at its highest and concluded that even if they had been in such a relationship the appellant could not satisfy the requirements of Appendix FM or paragraph 276ADE(1)(vi) HC 395 because he had been here unlawfully and could not therefore satisfy the requirements of the Immigration Rules and the appellant had not met the financial requirements of Appendix FM of the Immigration Rules. The Judge went on to consider Article 8 ECHR having regard to the appellant's claim at its highest and found that removal was proportionate.
6. The appellant appealed this decision on January 23, 2019 and although Judge of the First-tier Tribunal Saffer refused permission to appeal, Upper Tribunal Judge Storey granted permission to appeal finding it was arguable the Judge may have erred by failing to make adequate or proper findings on the witness evidence, in particular, the evidence of Asha Mahmood or other witness statements provided and appeared to have treated one inconsistency as largely determinative of the issue of whether there was a genuine and subsisting relationship.
7. No anonymity direction is made.

PRELIMINARY ISSUES

8. I raised with both Mr Bellara and Mr Bates the fact that the Judge had considered this case at its highest as evidenced in paragraphs 60, 61, 67 and 70 of the decision. I enquired from Mr Bellara whether he would be arguing the Immigration Rules could be met and he conceded that they could not due to the appellant's immigration status. Therefore the sole issue the Judge had to consider was whether removal would be proportionate.

SUBMISSIONS

9. Mr Bellara adopted the grounds of appeal and submitted that the proportionality assessment was flawed because the Judge had in his mind the appellant was not a credible witness but in assessing credibility the Judge had failed to consider the evidence of the stepdaughter, Asha Mahmood who had both provided a witness statement and given oral evidence and it was incumbent upon the Judge to make findings on her evidence. He referred to the guidance provided by the Tribunal in AK (Failure to assess witnesses' evidence) Turkey [2004] UKIAT 00230 in which the Tribunal stressed the importance of making an assessment on credibility of evidence. Even though the Judge had considered the

evidence at its highest he submitted there was an error by failing to engage with that evidence in paragraph 70 of the decision.

10. Mr Bates opposed the application and submitted that the Judge had considered the appellant's claim at its highest. Whilst reliance was placed on the stepdaughter's evidence he submitted that when the appellant moved into the family home in 2015 she was already 21 years of age so it was questionable how essential his support was at that stage. She was no longer a child who relied on his financial, physical or emotional support.
11. The Judge considered the appellant's appeal at its highest and Mr Bates submitted that any reliance would not have altered the conclusion in this case.
12. With regard to the second aspect of the grant of permission, Mr Bates submitted that the appellant and his partner had given conflicting evidence on two important issues which undermined their credibility. The first concerned the fact that the appellant claimed the relationship began the moment he moved into the property whereas the appellant's partner claimed the relationship began later. There was a second important discrepancy in that the appellant stated he had no contact with children with his wife and children living in Pakistan. This evidence was contradicted by his partner who stated that the appellant did have contact and that she herself had spoken to his sister. In all the circumstances, he invited the Tribunal to uphold the decision.
13. Mr Bellara reiterated the failure to assess that evidence undermined the whole decision.

FINDINGS ON ERROR IN LAW

14. The circumstances of this appeal are set out above and I note the Judge set out in some detail the background. The Judge considered the evidence from two angles. It is clear from the decision that the Judge did not find the appellant's evidence credible and concluded that not only were the appellant and partner not in a genuine and subsisting relationship but additionally they did not intend to live together.
15. The failure to make specific findings about Ms Mahmood's evidence could amount to an error in law but for the fact the Judge proceeded to consider the appellant's appeal at its highest. As I stated earlier, the Judge made clear that he considered the appeal on the basis that the relationship was genuine and subsisting and went on at paragraph [67] to consider whether Article 8 was engaged for the purposes of family life and concluded that it would be and thereafter considered proportionality.
16. The Judge followed the five-stage approach set out in the decision of Razgar [2004] UKHL 27 from paragraph [64] onwards of the decision. The Judge accepted the appellant had developed both a private and family life as evidenced by his findings in paragraphs [66] and [67] and then correctly went on to consider the position outside the Immigration Rules with specific reference to Section 117B of the 2002 Act. The cornerstone of that section is that the maintenance of effective immigration control is

in the public interest and at paragraph [70] the Judge set out factors that he felt should be considered in his assessment. None of the findings in paragraph [70] of the Judge's decision were challenged in today's grounds of appeal.

17. Mr Bellara's submission is that Ms Mahmood's evidence should have been given some weight and it was insufficient for the Judge to simply set out the evidence in paragraphs 35 to 38 of his decision.
18. Would the failure to carry out such an assessment be so material to outweigh the other findings in paragraph 70 of the decision and therefore amount to an error in law?
19. Ms Mahmood was 21 years of age when the appellant moved into the property. She is in full-time employment working as a receptionist at a dental practice although she had recently, at the time of the hearing, started a new job at a private scanning clinic. I have no doubt that she sees the appellant as a positive influence within her family, but the level of his involvement would not be sufficient to engage Article 8 in its own right.
20. The Judge correctly highlighted important issues that weighed on the side of maintaining immigration control. The appellant had come here as a visitor and his whole private and family life had been developed whilst he was here precariously. His status as a visitor had ended as long ago as June 2011. He did not meet his partner until 2015 and consequently any relationship that did exist was caught by the provisions of Section 117B of the 2002 Act because he formed that relationship whilst he was here unlawfully. Whilst not a deciding factor the Judge noted he had to use an interpreter at the hearing and appeared to speak little English and the Judge noted he was not financially independent and had been unable to meet the requirements of the Immigration Rules.
21. Against this background I am satisfied that any failure to deal with Ms Mahmood's evidence about her relationship with the appellant was not material to the issue of proportionality for the reasons set out above.
22. If the Judge had assessed proportionality only on the basis that the relationship was not genuine then there may have been an error in law, but on the basis the Judge considered the case at its highest I am satisfied there is no material error in law and I therefore dismiss the appeal.

Notice of Decision

The original decision is upheld and this appeal is dismissed.

Signed

Dated 29 April 2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeal I uphold the original decision to make no fee award.

Signed

Dated 29 April 2019

A handwritten signature in black ink, appearing to read 'SP Alis', with a long horizontal stroke extending to the right.

Deputy Upper Tribunal Judge Alis