



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/18642/2013

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 28<sup>th</sup> May 2014

Determination Promulgated  
On 4<sup>th</sup> June 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MR MUHAMMAD BILAL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Holt of Counsel  
For the Respondent: Mr McVeety

**DETERMINATION AND REASONS**

**Introduction**

1. The Appellant born on 28<sup>th</sup> August 1989 is a citizen of Pakistan. The Appellant who was present was represented by Mr Holt of Counsel. The Respondent was represented by Mr McVeety, a Home Office Presenting Officer.

### **Substantive Issues under Appeal**

2. The Appellant had entered the United Kingdom on 24<sup>th</sup> August 2010 as a student and continued in that capacity until 15<sup>th</sup> May 2013. His leave to remain was curtailed on 22<sup>nd</sup> February 2013 with effect from 22<sup>nd</sup> April 2013 as the college licence was revoked. On 14<sup>th</sup> March 2013 the Appellant then applied for leave to remain outside of the Immigration Rules as a fiancé. The application was refused by the Home Office on 16<sup>th</sup> May 2013.
3. The Appellant appealed that decision and his appeal was heard by First-tier Tribunal Judge Hague sitting at Manchester on 19<sup>th</sup> February 2014. The judge dismissed the Appellant's appeal under both the Immigration Rules and under the Human Rights Act.
4. Lengthy Grounds of Appeal for application for permission to appeal was submitted. Permission to appeal was granted by Designated Judge Lewis on 26<sup>th</sup> March 2014. The Respondent opposed such application by a letter dated 2<sup>nd</sup> April 2014. Directions were issued and the matter comes before me in accordance with those directions.

### **Submissions on behalf of the Appellant**

5. Mr Holt of Counsel referred me to the grounds for application to appeal. In summary of his submissions and those grounds it was submitted that the judge had looked wrongly or speculatively at features of the evidence and presentation of the case that had led him to conclude that there would be no insurmountable obstacles in the Appellant's wife relocating with him to Pakistan and therefore that finding was significantly flawed by the manner in which the judge had reached that conclusion.

### **Submissions on behalf of the Respondent**

6. The Respondent strongly supported the findings reached by the judge in his determination and pointed to the evidence within the Appellant's bundle that had led in part the judge to have reached conclusions and to have made statements within the determination that he had. It was said there was no error of law in this case.
7. At the conclusion I reserved my decision to consider the documents and evidence submitted. I now provide that decision with my reasons.

### **Decision and Reasons**

8. The Appellant's history in the UK is summarised above. It would appear that following the refusal of his application for leave to remain outside of the Rules as a fiancé, such refusal being taken on 16<sup>th</sup> May 2013, he then on 14<sup>th</sup> June 2013 entered into an arranged marriage with a British citizen.
9. Although the marriage had taken place after the Home Office refusal, the refusal letter noted the Appellant's claim to have a genuine and subsisting relationship with

his fiancée and to have a marriage arranged. The Home Office therefore had looked at the Appellant's case under both Appendix FM and paragraph 276ADE of the Immigration Rules. Contained within that examination was a consideration of whether EX.1 applied to the Appellant which itself has an element of discretion and further the Home Office had looked outside of the Immigration Rules to see if there were any compelling or compassionate circumstances to warrant an examination of the case outside of the Rules.

10. The judge had provided a summary of the evidence that had been presented before him. The judge had correctly noted that the Appellant's application could not succeed under the Rules firstly because entry clearance was not granted in that capacity but also because on the evidence presented had the Appellant made application in the proper manner he would have failed to meet the requirements of maintenance. There may have been other features that would have founded such application if made from Pakistan but the judge correctly identified those features. It is also not argued that the Appellant failed to meet the requirements of paragraph 276ADE.
11. The judge correctly had therefore gone on to consider the matter under EX.1(b) to see whether there were any insurmountable obstacles to family life with his partner continuing outside the UK.
12. The judge had considered the position of the Appellant's wife and in summary had noted that at paragraphs 6 to 12 of the determination. In summary and as the evidence discloses the Appellant's wife was a young woman of 19 years of age. Although born in the UK and a British citizen she was of Pakistani background and indeed the Appellant's bundle contains the photocopies of the British passport of her family members demonstrating they were all born in Pakistan. It is unknown, because the evidence does not disclose one way or the other, whether her family members also maintain Pakistani nationality and passports. The marriage between herself and the Appellant was an arranged marriage between the two families and at a time when it was known to her and all the family members that he had no settled status in the UK and indeed had only been in the UK for a short period on a temporary visa with no expectation or basis for presumption he would not be removed back to Pakistan.
13. The judge had concluded at paragraph 8 that the marriage had been arranged with the principal objective of creating a situation in which the Appellant could remain in the United Kingdom. That is a conclusion that was open to the judge to reach on the evidence before him and in particular given he had the opportunity of seeing and hearing from witnesses in this case. The background history referred to above is certainly not inconsistent with the conclusion reached by the judge. In terms of any difficulties or problems that she would face in Pakistan the judge had noted her evidence at paragraph 10 in that the only example that she had provided had been her inability to work if she went to Pakistan. The judge had found that to be somewhat disingenuous as she had been unemployed since leaving school and had only began employment three months prior to the application and in circumstances

where he viewed that as being related to the appeal. Again he was entitled to reach that conclusion. It is also noteworthy that her witness statement essentially although not exclusively referred to her inability to work as being in her view the main obstacle to her relocating to Pakistan.

14. If it could be said that the wife's young age and possible lack of life experience may not necessarily have made her aware of potential obstacles in going to Pakistan the same assumption could not be made for her family members all of whom, as the judge found, had supported and indeed put together this arranged marriage.
15. The judge having found as he was entitled to that the Appellant failed under the Immigration Rules his examination of the matter thereafter under EX.1(b) he was entitled to conclude that there were not insurmountable obstacles to the resettlement of the Appellant's partner. He had correctly referred himself to Gulshan as to the meaning of insurmountable obstacles, namely the resettlement of a partner to be construed as relating to the practical possibilities of relocating. He had also at paragraph 12 noted and taken account of the fact that the Appellant's wife was a British citizen and should not likely be expected to forego the advantages of living in the country of her birth. The conclusions reached by the judge in the remains of paragraph 12 and indeed in other paragraphs within his determination are conclusions he was entitled to reach on the evidence before him both in documentary form and that which was presented at the hearing.
16. Although not referred to by the judge because of the date of hearing; in support of the position adopted by the judge the case of Haleemudeen [2014] EWCA Civ 558 is a relevant case in which amongst other matters the court at paragraph 64 noted that the provisions of paragraph 276ADE and Appendix FM undoubtedly constitute a formidable hurdle to overcome. A further case of some relevance to this matter is that of Rafiq heard on 7<sup>th</sup> May 2014 in the High Court. That case concerned an Appellant seeking to remain in the UK as the spouse of a British citizen. In that case it was noted that the correct question was whether there were insurmountable obstacles to family life continuing if the claimant was removed and that was the test under both European jurisprudence and paragraph EX.1(b). It should be further noted that in that case (which also concerned a person from Pakistan) the High Court noted that the status of the claimant at the time the relationship started and his wife's awareness of that status are relevant features. Where his status was precarious, it would only be exceptional that removal would be a violation of Article 8. It should be further noted that that case said:

"I need not repeat the analysis of the phrase exceptional circumstances in MF (Nigeria). It refers to other factors which are not expressly set out in the new Rules. In the present case it would include the fact that the claimant's wife is not only a British citizen but also culturally and entirely British. It would encompass the respect for her right to reside anywhere in the EU and in particular in the UK. Such factors however are not that uncommon. They do not here persuade me that the decision was legally flawed. In effect this challenge though brought by way of judicial review ends up as an appeal to the

merits of the case and the sympathy of the Tribunal. I can well see that the prospect of moving to Pakistan or losing her husband is acutely stressful for the claimant's wife. However having regard to the claimant's status at the time the relationship started and at the time of marriage that is a choice which was foreseeable."

17. The judge in this case was entitled to look at the factors he referred to in terms of forming a judgment on the ability or otherwise of the Appellant's wife to relocate to Pakistan. He had also identified that the marriage was essentially engineered or brought about for the purposes of this application a conclusion he was entitled to reach. He was also aware of the accepted fact that at the time of such marriage she and the respective families who had arranged the marriage were fully aware of the Appellant's precarious immigration status. When looking at the recent case law following the new Immigration Rules and including the two cases referred to above which were promulgated after the judge's determination the approach taken by the judge in this case was correct and the conclusions he reached were conclusions open to him on the evidence and compatible with recent case law in this field.

### **Decision**

18. There was no error of law made by the judge in this case and I uphold the decision of the First-tier Tribunal.

Signed

Date

Deputy Upper Tribunal Judge Lever