



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

Appeal no: **IA 23429-13**

THE IMMIGRATION ACTS

At **Field House**
on **24.01.2014**

Decision signed:
24.01.2014
sent out:
28.01.2014

Before:

Upper Tribunal Judge
John FREEMAN

Between:

HASSAN ALI KHAN

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: *Nayyera Hashmi* (counsel, by direct access)

For the respondent: Miss E Martin

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Patricia Carroll), sitting at Taylor House on 3 September 2013, to dismiss a long residence appeal by a citizen of Pakistan, born 30 June 1980. The appellant claimed to have arrived in this country on a false passport on 6 February 1998: while the judge did not accept that, for reasons she gave, I shall proceed for the time being on the assumption that he has been here ever since then.

2. Under the 'new Rules' (in force from 9 July 2012), the appellant could not satisfy the long residence provisions of paragraph 276B. The 'new Rules' also made it necessary for cases which did not satisfy them to be 'exceptional' for article 8 to be successfully invoked: see *MF (Nigeria)* [2013] EWCA Civ 1192. The fact that the appellant made his application on 5 July 2012, before the change in the Rules, cannot help him: see *Odelola* [2009] UKHL 25.

3. That leaves the challenges to the judge's article 8 findings: on these, permission was given on the basis that she hadn't taken into account "a bundle of photographs and wage slips" which the permission judge had found in the file. Assuming again that these were there to be seen when the judge heard the case, I have considered them for myself.
4. Even assuming in the appellant's favour that he has been in this country since 1998, before he was 18, there is nothing arguably exceptional about his private and family life here, except for his claimed relationship with Katarzyna Szelazek, a Polish citizen, and the child born to her, he says by him, on 29 October, since the hearing before the judge.
5. The judge had before her evidence about hospital appointments for Miss Szelazek, relating to her expected confinement; but, for reasons she gave, she did not accept that the appellant had "a genuine and committed relationship" with her. It is not for me to say whether I agree with those reasons or not; it is enough to note that they were based on the evidence before the judge, including a handwritten document, referred to as Miss Szelazek's NHS pregnancy notes.
6. The question is whether the evidence the judge did *not* consider would have been reasonably likely to affect the result she reached, and in particular her negative findings on the relationship between the appellant and Miss Szelazek. Since Miss Hashmi had to concede that none of the other material, apart from the pregnancy notes, established any connexion between the two of them that could not have done so. As for the notes, the judge correctly noted that Miss Szelazek had ticked the box marked 'single': while that might have been explained by her not being married to the appellant, she had also left blank the space for 'partner's details'.
7. I do not consider that there is anything in the material before me, whether dealt with by the judge or not, which could realistically have led her to a different conclusion than the one she reached. Miss Szelazek was not present before me, the appellant said because she was looking after their child. If they are in a 'durable relationship', and especially if they have a child together, then an EEA application should be made as soon as possible. However for the present, the judge cannot be regarded as arguably wrong in law in dismissing this appeal, both under the Rules and on article 8.

Appeal dismissed

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper
Tribunal)

