Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/44238/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 24 October 2014	**On 18 November 2014**

Before

DEPUTY JUDGE DRABU CBE OF THE UPPER TIER TRIBUNAL

Between

I.S.

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY DIRECTION IS MADE

Representation:
For the Appellant: Ms Suman Sharma of Counsel instructed by Immigration Advice Bureau.
For the Respondent: Mr P Nath, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a Pakistani national. She was born on 1 January 1977. She is the spouse of a British citizen A.B. She was refused leave to remain by the respondent and her appeal against the decision was heard on 9 June 2014 at Columbus House, Newport by Judge Walker, a Judge of the First Tier Tribunal. In a determination promulgated on 23 June 2014 Judge Walker determined the appeal and allowed it. The respondent sought permission to appeal to the Upper Tribunal alleging that the determination was infected by material errors of law. Permission to appeal was granted by Judge Landes, a Judge of the First Tier for reasons given in the decision dated 1 September 2014. When the matter came before me the appellant was the Secretary of State and the respondent was I.S. However for the sake of convenience I have retained their titles in this determination as they were

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before the First Tier i.e. describing I.S. as appellant and the Secretary of State as respondent.

2. In granting permission to appeal Judge Landes inter alia said, "There is force in paragraph 1 of the grounds. The judge allowed the appeal under immigration rules on the basis that the appellant met the requirements of EX.1 but the appellant had leave as a visitor when she made the application for leave to remain and the case of **Sabir [2014] UKUT 0006** holds that in such a case EX.1 does not apply. It seems very likely given the Judge's factual findings that the judge would have allowed the appeal under Article 8 ECHR (or possibly even Article 3 ECHR (see [37]) in her findings. But she did not analyse the case in this way or even refer to Article 8 ECHR in her findings. As the judge was clear that she was allowing the appeal under immigration rules rather than on any other basis, I do not think it can be said that any error is unarguably immaterial.

3. Having heard arguments from Mr Nath and Ms Sharma, I was satisfied that the decision of Judge Walker was in material error of law as alluded to by Judge Landes in her grant of permission decision. Judge Walker was wrong to allow the appeal under Immigration Rules as was held in Sabir [2014] UKUT 0006. I announced my decision in open court. I invited parties to make any submissions they wished to assist me in re-making the decision. In their addresses to me both representatives were content with findings of fact made by Judge Walker and posed no challenge to any of these.

4. In re-making the decision, I have therefore adopted the findings of fact made by Judge Walker. The Judge noted in Paragraph 31 of the decision that "there was no serious challenge by the respondent to the fact that the appellant and sponsor are in a married relationship. I found that the appellant and the sponsor both spoke very warmly of each other and showed a degree of care and concern for each other which is commensurate with them being in a married relationship. It follows that they have a family life together".

5. Judge Walker had heard oral evidence from the appellant as well as the sponsor. The sponsor was described as "an extremely impressive witness". The Judge accepted that there are insurmountable obstacles to the sponsor and the appellant returning to Pakistan because they have an inter caste marriage and the community in Pakistan and her family will not accept this and that the appellant fears possible threat of physical harm. The Judge also accepted the appellant's evidence that her family had threatened her and these threats were of prime concern to the sponsor. The Judge also went on to find, "I am satisfied that the appellant and the sponsor will not be able to sustain themselves in Pakistan, that the appellant's and the sponsor's fears are well founded because of their marriage and the fact that the appellant was previously engaged to someone else in Pakistan which arrangement had only been broken by the marriage to the sponsor." After making reference to the decision of the Upper Tribunal in **Gulshan (Article 8 – Rules – Correct approach [2013] UKUT (IAC).** The Judge allowed the appeal saying, "The inability of the sponsor to be able to earn in Pakistan, the extremely limited earning capacity of the sponsor in Pakistan, their anxiety and fearfulness of return to Pakistan and their need to relocate to an area where they have no contacts and therefore no support amount to the appellant having insurmountable obstacles to family life with the sponsor continuing outside the UK." The Judge allowed the appeal stating that this was done "as the appellant meets the requirements of Para EX1 (b) of the Rules which is an exception to the limiting requirements of para276 ADE".

6. The facts of this case are rare and exceptional and clearly and undoubtedly engage Article 8 (1) of the Article 8 of the ECHR. Reminding myself of the leading jurisprudence on the application of Article 8 such as the decisions in Razgar and Huang, I find that the preponderance of probabilities establish that it would be unreasonable and disproportionate to remove the appellant from the UK as such removal would bring an end to the appellants' family like with the sponsor – her husband. I also remind myself that post July 2014 pre 2014 principles set down by case law are diluted. This is demonstrated by the judgement in **R (on the application of Nagre) v Secretary of State for the Home Department [2013] EWHC 720 (Admin)** wherein Mr. Justice Sales held that Lord Bingham had not intended to be unduly prescriptive in **EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41** when he said that it was rarely proportionate to uphold an order for removal where spouses had a close and genuine bond, and the resident spouse could not reasonably be expected to follow the removed spouse to the country of removal." The Court found that that reference was a loose summary of how the ECtHR tended to look at the issue rather than an authoritative expression of the correct approach. In the appeal before me I remind myself that the Judge had made her findings of fact after having considered all the evidence including the relevant objective evidence on Pakistan.

7. In the circumstances this appeal is allowed.

K Drabu CBE
Judge of the First Tier Tribunal.
16 November 2014

TO THE RESPONDENT:

As I have allowed the appeal and for the reasons given I concur with the view of Judge Walker that the impugned decision should have been different, I make a full award of the fees paid by the appellant.

K Drabu CBE
Judge of the First Tier Tribunal.
16 November 2014