



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07913/2014

THE IMMIGRATION ACTS

Heard at Field House
On 8 July 2015

Decision and Reasons Promulgated
On 21 August 2015

Before

UPPER TRIBUNAL JUDGE CONWAY
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

ABBAS QUMAR
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Usman (Usman and Co Solicitors).

For the Respondent: Mr E Tufan (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is the appeal of Qamar Abbas, a citizen of Pakistan born 7 September 1977, against the decision of 18 September 2014 by the Respondent to refuse him leave to enter and set removal directions against him following the decision to refuse his asylum claim.
2. The Appellant arrived in the United Kingdom in January 2001 and claimed asylum, on the basis that he and his brother had been harassed by the police because of their

Shia faith and membership of the MQM which had led to their father's murder in December 2000 at the hands of the state authorities. His asylum claim was refused by the Secretary of State because, whilst he may have been involved with the MQM as a youth and the country evidence indicated that his claim as to his father's involvement and subsequent ill treatment and death at the hands of the security forces was plausible, he had not maintained any involvement with the MQM and his failure to seriously pursue his claim by engaging with the refugee determination process for a number of years undermined his credibility.

3. Judge Hawdon-Beal determining the appeal in the First-tier Tribunal in a decision dated 17 November 2014 did not accept that the Appellant would face persecution on a return to Pakistan, because the authorities had ample opportunity to act against him and his older brother had they genuinely been interested in doing them harm; besides, after so many years away, there was no reason to think him still at risk on return, given his low profile in the MQM. In any event he could relocate from Lahore to another part of the country where he would be safe and where there was no reason to think the authorities would not provide him with protection.
4. The Appellant's alternative head of argument, based on his rights protected by Article 8 of the ECHR, had two elements: his family life, as by the time of the hearing before the First-tier Tribunal, the Appellant was in a relationship with a refugee, and his private life, based on his long residence here which had inevitably led him to form friendships here and to remain here lawfully. He raised the question of the relationship on his appeal, as he was entitled to do under GEN.1.9 of the Immigration Rules. The First-tier Tribunal did not accept that the relationship amounted to family life absent proof of cohabitation and the reality of their family life together. It noted his account of having worked in this country lawfully, if spasmodically, since July 2012, and of having socialised with various friends at community charity events, the local mosque, barber's shop, and local Chinese restaurant, who had provided letters of support, though he expressed equivocation as to the credibility of their assertions to have a very close relationship on account of the fact that many lived far away from him. Given the delay in determining the Appellant's outstanding application, the fact that he was economically active and could speak English, Judge Hawdon-Beal found that he had established private life which would be the subject of a sufficiently serious interference were he to be removed as to amount to a breach of Article 8 ECHR.
5. An application for permission to appeal was brought by the Secretary of State. Permission to appeal was granted on 23 March 2015 and following a hearing to establish the question of error of law, Judge Conway found that the decision of the First-tier Tribunal had to be set aside because of the inconsistency in the judge's approach to the evidence, in that he appeared to have both doubted yet accepted the strength of his private life with his friends, and that having expressed concerns as to the extent to which the Appellant had lawfully worked, had been wrong to treat him as a person whose connections with the labour market could render his removal disproportionate.

6. The matter was then adjourned and the appeal came on for re-hearing before the Upper Tribunal, now constituted as a Panel, Judge Conway being joined by Judge Symes, on 8 July 2015. No challenge was made to the findings of the First-tier Tribunal as to the asylum claim.
7. The Appellant gave evidence, saying that he and his now wife had married by way of civil ceremony on 17 February 2015 and then had a religious ceremony in April 2015. They now cohabited in Oxford, and had done so from the date of their civil marriage. Friends and relatives had attended the ceremony but had not come to the hearing today because he had felt it was wrong to ask them to do so during Ramadan, when they were fasting over the long summer days. He had worked since 2012: he had not claimed public funds and had lived with different friends during his time in the United Kingdom.
8. Cross examined he said that he had earned £115 a week, as an assistant in various shops. His wife earned £200 a week working in the reception of a take-away restaurant; she had pay slips though they had not placed them before the Tribunal. She was paid in cash and there was no evidence of her earnings by way of deposits into a bank account. They could not reasonably be expected to live abroad as his wife was a refugee from Pakistan.
9. The Appellant's wife MM gave evidence. She confirmed the date of their civil ceremony and said they had had the religious ceremony on 19 April 2015, after when they had moved in together. They had no documents to show this aside from their registration with the local GP, which they had not thought to provide to the Tribunal. Her father had high blood pressure and her mother lived in Blackburn, which had prevented them attending to attest to the genuineness of their relationship. She had been granted asylum on the basis of her family's Ahmadi faith.
10. Cross examined she said that she had no proof of cohabitation beyond the addresses on her pay slips. She earned some £800 a month, and could not say what this amounted to every week.
11. For the Respondent it was submitted that the limited material available did not establish that the relationship was a genuine one. Even if it was to be accepted that the relationship was factually established so as to qualify for assessment under the Exception at Ex.1 of Appendix FM, there were no insurmountable obstacles to the Appellant returning abroad and seeking entry clearance, there being no children involved.
12. For the Appellant it was submitted that the lack of documentation showing the genuine nature of their relationship was down to the marriage having taken place very recently. The Appellant had clearly established private life in the United Kingdom given his long residence here and the delays in processing his asylum claim meant that, applying the *EB Kosovo* principle, he should be granted leave to remain.

Findings and Reasons

13. The evidence provided in support of the relationship being genuine is extraordinarily scant, despite the fact that its veracity was put in issue by the decision of the First-tier Tribunal some months ago. Notwithstanding the fact that Judge Hawdon-Beal rejected the claim that there was family life established between the couple absent supporting evidence, virtually nothing further of substance has been placed before the Upper Tribunal. No supporting witnesses have been called notwithstanding that various family members are said to have attended the civil and religious ceremonies: there is no reason to think that they would lack knowledge of the reality of the Appellant's relationship. There has been no detailed evidence provided as to the history of their relationship and how it developed over time by way of witness statement or oral evidence. There is no persuasive evidence available as to their asserted cohabitation. Given that the application was not made to the Home Office, but only raised on appeal, the Respondent has not had the opportunity to make any enquiries for herself: this does not prevent Appendix FM being raised on appeal, but it does give us pause for thought before accepting poorly substantiated contentions.
14. We do not accept, on balance of probabilities, that the relationship is established as a genuine and subsisting marriage. We do not say that the Appellant and Sponsor are party to a dishonest attempt to gain leave to remain for him by deception: merely that, on the materials before us, we are unable to conclude that they are party to a subsisting relationship. It is open to them to pursue their attempt to regularise the Appellant's immigration status by making the appropriate application to the Secretary of State directly, providing the appropriate documentation.
15. Our rejection of the fact of a relationship qualifying the Appellant for the partner route determines the outcome of the appeal on family life grounds both inside and outside the Immigration Rules. The case as put under Appendix FM fails as it is not established that the Sponsor is the Appellant's partner. There can be no disproportionate interference with family life where the factual relationship underlying the asserted Article 8 rights has not been established by cogent evidence.
16. As to the other dimension of the Appellant's Article 8 claim, we accept that his lengthy residence in this country will have led to his establishing private life. The letters from his friends such as Mr Khan Mani of London SW18 show that he regularly participates in charity and community activities; Mr Tsang says he joins him and his friends for nights out, and makes his children laugh. There are other letters to similar effect.
17. We do not accept that this material can lead to his appeal's success under the Immigration Rules: Rule 276ADE(vi) requires that he establish "very significant obstacles to [his] integration into the country to which he would have to go if required to leave the UK." He is a person who appears to make friends easily and who would return to Pakistan with the advantage of a lengthy stay in an English-

speaking country, which should equip him to make a life for himself in a country where he presumably has extended family members to support him.

18. So the case turns on proportionality. Its assessment must take account of certain statutory factors in so far as they are relevant to the considerations in play in this case.

“PART 5A

Article 8 of the ECHR: public interest considerations ...

117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) Little weight should be given to –
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner,
that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.”

19. The Appellant's presence in the United Kingdom, whilst lengthy, has been consistently on a precarious basis. The Secretary of State has delayed in the determination of his asylum claim, but Mr Usman did not seek to persuade us that the history set out by the First-tier Tribunal at [23]-[24] of its determination was incorrect: the Appellant's representatives have given conflicting evidence over time as to his wish to pursue an asylum or human rights claim, he has not kept in touch with his solicitors consistently, and he has known at least since March 2011 that he had missed the interview at which he had an opportunity to put forward his asylum claim. So whilst it is true that he spent some years awaiting the determination of his asylum claim, that claim has been assessed on appeal as unfounded. As was most recently stated by the European Court of Human Rights in *AS v Switzerland* [2015]

ECHR 627, the fact that the presence of asylum seekers on the territory of state party to the ECHR is tolerated by the national authorities whilst asylum claims are determined does not automatically entail that they must be granted settlement under any obligation arising pursuant to Article 8 of the Convention. The situation might be different where an asylum claim is accepted as viable at the time of the person's arrival in the United Kingdom but is defeated only by a post-arrival change of circumstances, or where there is some other prejudice to the person involved, or even where the protected Article 8 interests are rather stronger than a bare private life case based on friendships established during the claim's determination: but none of those factors are present here, and the unchallenged finding of the First-tier Tribunal is that he was not at risk when he first left Pakistan.

20. The Appellant's working history is sketchy and he has lived here for many years without being economically active. To his credit he speaks English. None of his friends attended the hearing to give evidence of the strength of his connections here. They do not suggest the relationships that he has here are the kind of friendships that could not be readily replicated abroad by a sociable person such as himself. We do not think that they can be categorised as central to his identity or to his ability to function as an individual. He has had the relative advantage of having worked in this country which should give him some additional experience on which to draw should he return to Pakistan.
21. On balance we do not consider that the public interest in maintaining a consistent and certain system of immigration control is outweighed by the private life established by the Appellant in the United Kingdom. We accordingly dismiss the appeal.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law which led to its decision being set aside.

We re-make the decision in the appeal by dismissing it. In those circumstances no fee award is appropriate.

Signed:
Deputy Upper Tribunal Judge Symes

Date: