Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/21245/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 12 January 2015	**On 21 January 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr OMAR RIZWAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondents: Miss P Heidar, Authorised Representative
(AA Immigration Lawyers)

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge VA Osborne on 27 November 2014 against the determination of First-tier Tribunal Judge Boyd who had dismissed the Appellant's appeal against removal on human rights (Article 8 ECHR family life) grounds in a determination promulgated on 9 October 2014.

2. The Appellant is a national of Pakistan, born on 27 December 1985. It is not necessary to repeat his immigration history or the history of the preceding litigation in any detail which is set out at [16] of Judge Boyd's determination. In essence it was held in the Upper Tribunal that a previous First-tier Tribunal Judge had failed to deal with the Article 8 ECHR claim which the Appellant had raised in the context of his Tier 4 (General) Student Migrant appeal. The appeal was remitted to the First-tier Tribunal for that purpose. The Appellant relied on his family life with his British wife and British child. Judge Boyd found that Appendix FM was not met, in terms of the requirement for entry clearance and in terms of the financial requirements. Nor was EX.1 met. It was proportionate for the Appellant to return to Pakistan to seek entry clearance.

3. Permission to appeal was granted because it was considered that it was arguable that the judge had erred in his assessment of the financial requirements of Appendix FM. The Appellant's son as a British Citizen was excluded from the calculation and so the correct figure was £18,600, not £22,400.

4. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found. A rule 24 notice dated 10 December 2014 opposing the appeal had been filed on the Respondent's behalf.

Submissions – error of law

5. Miss Heidar for the Appellant relied on the grounds of onwards of appeal and the grant of permission to appeal. The judge had miscalculated the income requirement by including the British child in the calculation. The judge had not given sufficient attention to the components of section 117B of the Nationality, Immigration and Asylum Act 2002. The Appellant held a degree and spoke English. The public interest did not require the Appellant's removal in view of his genuine and subsisting relationship with a child whom it was not reasonable to expect to leave the United Kingdom.

6. Mr Tarlow for the Respondent relied on the rule 24 notice. He accepted that the judge had erred in his calculation of the financial requirements but that error was

not material as it was an Article 8 ECHR claim, not an Appendix FM application. In any event, other parts of Appendix FM had not been satisfied, e.g., the specified documents. Nor was section 117B(6) was satisfied as the child did not have to leave the United Kingdom with the Appellant. Alternative arrangements were possible, as the judge had found when considering EX.1. The judge had reached a properly reasoned decision and there was no basis for interfering with it.

7. Miss Heidar addressed the tribunal briefly in reply. The judge's approach was mistaken. This was a situation where Appendix FM's conditions were inapplicable because it was an Article 8 ECHR claim.

8. The tribunal indicated at the conclusion of submissions that it found no material error of law and reserved its determination which now follows.

No material error of law finding

9. It was accepted by the Secretary of State that the judge had inadvertently erred in his calculation of the financial requirements of Appendix FM. That error was immaterial, as this was an Article 8 ECHR claim, not an application under Appendix FM. The relevance of Appendix FM to the Article 8 ECHR family life claim was whether it was possible for the Appellant to comply with those provisions and, if so, whether it was reasonable for him to be expected to do so in all the circumstances. The judge's error was in the Appellant's favour, in that the judge approached Appendix FM more stringently than was necessary. By implication he found that it would be possible for the Appellant to meet the requirements in principle.

10. The judge's treatment of the evidence was more than sufficient and he set out his essential findings with clarity in a careful and well structured determination. The judge applied section 117B of the Nationality, Immigration and Asylum Act 2002 and plainly paid close attention to it. The judge was entitled to find that the Appellant's marriage had been arranged when the Appellant's immigration status was precarious in the sense that he had temporary leave only to be in the United Kingdom, which leave was on the point of expiry. The judge was similarly entitled to find that British Citizen child who was very young and adaptable could live with his mother while his father obtained entry clearance from Pakistan or alternatively could leave the United Kingdom and live with his parents in Pakistan. The decision as to whether the child should travel to Pakistan with his parents pending his father's obtaining entry clearance to return to the United Kingdom was obviously one for the Appellant and his wife to reach. There were a number of possibilities open to them which in no way could harm the child.

11. The judge was entitled to find on the evidence before him that there were no compelling, compassionate or exceptional circumstances which might have required the Secretary of State to consider the exercise of discretion outside the Immigration Rules in the Appellant's favour. On the contrary, the parties were well aware of the situation when the marriage was contracted. Nevertheless the judge conducted a Razgar [2004] UKHL 27 analysis, giving proper reasons for finding that the Appellant's removal was proportionate to the legitimate objective of immigration control. His conclusions were manifestly open to him.

12. The tribunal accordingly finds that there was no material error of law in the determination and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell