



IAC-PE-SW-V1

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

Appeal Number: IA/29320/2014

THE IMMIGRATION ACTS

**Heard at Manchester
On 5th October 2015**

**Decision & Reasons Promulgated
On 8th October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR MUHAMMAD BILAL
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Schwenk of Counsel instructed by Arshed & Co Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, Mr Muhammad Bilal, date of birth 3rd August 1988, is a citizen of Pakistan. I have considered whether or not it is appropriate or necessary to make an anonymity direction in these proceedings. Having considered all the circumstances I do not consider it necessary to make such a direction.
2. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Manuel promulgated on 18th February 2015. The judge dismissed the

Appellant's appeal against the decision of the Respondent to refuse the Appellant further leave to remain in the United Kingdom and thereupon to remove the Appellant from the United Kingdom.

3. By a decision made on 21st April 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original determination.

Preliminary Matter

4. At the outset of the hearing Counsel on behalf of the Appellant sought leave to amend the Grounds of Appeal. In the application to amend the Grounds of Appeal the representative is seeking to rely upon Appendix FM and specifically paragraph EX.1(b) of the Immigration Rules. It was being asserted that the judge had not made a conclusion as to whether or not there were insurmountable obstacles to family life between the Appellant and his spouse continuing outside the United Kingdom. It is submitted that nowhere in the Decision does Judge Manuel make a find in respect of insurmountable obstacles. Instead the judge focuses on Article 8 of the ECHR outside the rules and it is suggested dealt primarily with whether or not there are exceptional circumstances.
5. The power to amend a document is set out in Rule 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008. By those Rules the Upper Tribunal is empowered to amend any document, that must include the Grounds of Appeal. However the power contained therein must be exercised in accordance with the overriding objective to deal with cases fairly and justly.
6. I heard submissions from both the representatives. Having considered all the circumstances I did not allow an amendment to be made to the Grounds of Appeal. In refusing that I took into account a number of matters.
7. First and foremost within the Reasons for Refusal Letter consideration is given to the whole of the circumstances of the Appellant including Appendix FM and paragraph EX.1. The reasons for refusal letter specifically deals with whether or not insurmountable obstacles exist to the Appellant's British partner relocating with the Appellant to Pakistan. The reasons for refusal letter specifically rejects the claim that there could be any insurmountable obstacles. The issue had therefore specifically been raised within the refusal letter. The refusal letter is dated 3rd July 2014.
8. The original Grounds of Appeal had stated that the decision is otherwise not in accordance with the law and is not in accordance with the Immigration Rules but had not referred to any specific provision within the rules upon which reliance was placed.
9. However by a letter of 6th May 2014, a letter before the decision by the Respondent, the legal representatives acting on behalf of the Appellant had indicated that the Appellant was seeking to rely upon Article 8 outside the Rules and exceptional circumstances in respect thereof.

10. During the course of the hearing consideration had been given to the Immigration Rules and specifically to Appendix FM but it appears to have been accepted that the Appellant could not meet the requirements of the Rules. That is evident from paragraph 7 of the Decision. Thereafter the legal representatives in accordance with the letter of 6th May had indicated that they were seeking to rely on family life under Article 8 outside the rules and that removal would in the circumstances be disproportionate.
11. Accordingly from reading the Decision it is clear that prior to the date of the hearing it was accepted that the Appellant could not meet the requirements of the Rules and that therefore Article 8 outside the rules was the basis upon which the Appellant was seeking to present his claim. From paragraphs 7 and 8 of the Decision it appears that at the hearing it had been conceded that the Appellant could not meet the requirements of Appendix FM, including EX.1, and therefore the Appellant was again seeking to rely upon Article 8 outside the Rules.
12. I also took account of the immigration history of the Appellant and the findings made in a previous Decision in respect of this Appellant. The immigration history is:
 - (a) The Appellant entered the United Kingdom on 12th October 2009 with entry clearance as a student valid until 30th November 2013.
 - (b) On 16th June 2012 the Appellant married one Angela Margaret Balneaves a person settled in the United Kingdom.
 - (c) On 6th July 2012 the Appellant made application for leave to remain as the spouse of Angela Margaret Balneaves.
 - (d) The application was granted on 1st March 2013 with leave valid until 1st March 2015.
 - (e) In April 2013 the Appellant had entered into a relationship with another female named Irem Bilal, the Sponsor herein.
 - (f) By 17th May 2013 the Appellant was applying for leave to remain on the basis of his relationship with Irem Bilal. That application was refused on 13th August 2013. The Appellant appealed that decision.
 - (g) On 16th August 2013 the Appellant entered into an Islamic marriage with Irem Bilal.
 - (h) On 23rd December 2013 the Appellant's appeal against the refusal of 13th August 2013 was dismissed by First-tier Tribunal Judge Parker. The Tribunal Decision for that appeal is within the papers. It is evident from those papers that the judge considered the status of the relationship of the Appellant and Miss Bilal at the time. He accepted that it was a genuine relationship but found that there was no credible suggestion that Miss Bilal could not live in Pakistan. He did at that stage raise the issue of the availability of medical facilities in Pakistan. Judge Parker dismissed the Appellant's appeal in so doing he did treat the relationship between Miss Bilal and the Appellant as a genuine relationship but there were no credible suggestions that the Appellant's spouse could not live in

Pakistan and it was therefore proportionate for the Appellant and his spouse to return to Pakistan.

- (i) On 18th March 2014 at Manchester County Court the Appellant's marriage to Mrs Balneaves was dissolved.
 - (j) On 12th April 2014 the Appellant and Irem Bilal registered their marriage in Manchester.
 - (k) On 16th April 2014 the Appellant's leave on the basis of his marriage to Mrs Balneaves was curtailed on the basis that the Appellant's marriage to Mrs Balneaves had broken down and the Appellant had not disclosed that fact to the Respondent until making the application in May 2013.
 - (l) The application for leave on the basis of his relationship with Irem Bilal was refused. That resulted in the present appeal.
13. Although insurmountable obstacles were not specifically referred to within the Decision by Judge Parker, it is clear that he concluded that there was no credible suggestion that the Appellant's spouse could not go to Pakistan to live.
 14. Whilst further evidence has been presented to support the Appellant's case it was a matter that was clearly at the forefront of the representatives' mind in making submissions on behalf of the Appellant at the hearing. However it was conceded that the Appellant could not meet the Immigration Rules. The judge has specifically recorded that. In the light of that the judge cannot be criticised for concentrating on the only issues that were raised by the Appellant and the Appellant's representatives that is Article 8 outside the rules.
 15. In the circumstances the Appellant's new representatives are seeking to raise issues which were not specifically raised before the judge and were according to the Decision itself specifically conceded. I cannot see that the judge can be criticised for accepting what professional legal representatives concede that is that the requirements of the Rules could not be met and that the issues in the case related only to Article 8 outside the rules.
 16. In light of the matters set out I did not give leave to amend the Grounds of Appeal.
 17. Turning to the permission granted in granting permission emphasis has been made of Section 117A to D of the 2002 Act as amended. There is reference to the Section in paragraph 13 of the decision. It is suggested in the leave that as the Appellant had established his relationship with Miss Bilal at a time when he was lawfully in the United Kingdom the judge in applying Section 117 has misapplied the provisions of the Act and that the argument that little weight should be given to such a relationship is an error of law on the part of the judge. It is suggested that that is the conclusion to be drawn from the fact that the judge has set the provision out in paragraph 13.
 18. However if one examines the judge's approach the judge has not suggested that the Appellant has acquired his family life when his status was precarious as suggested in

Section 117B. Rather in paragraphs 42 and 43 the judge has looked at other factors referred to in Section 117B. The judge has found that the Appellant and his spouse do not meet the requirements of the Rules to be able to financially support themselves. Such is a material fact not only with regard to meeting the Rules and Section 117B but also as to the proportionality of the decision as to whether or not the Appellant should be allowed to stay. The judge does not therein refer to any question of whether or not family life exists and giving little weight to such family life. The judge has clearly accepted that family life does exist and due weight has been given to such family life. The judge has not approached the issue on the basis that in accordance with Section 117 B little weight should be given to such family life.

19. Accordingly I do not find that there is any error as alleged in Ground 1.
20. With regard to Grounds 2 and 3 the permission itself points out that there is nothing that indicates that the judge had acted unfairly in the manner in which the case was dealt with. It is suggested in Ground 2 that there are inconsistent findings and failing to reconcile issues. I do not find that that has been made out.
21. Equally in Ground 3 it is suggested that there is procedural unfairness, again I do not find that that is made out. The issue that was the subject of such had been raised previously in the decision of Judge Parker but no evidence had been produced with regard to it. It was clearly an issue that had been considered in the previous Decision and the judge was entitled to take such into account.
22. With regard to Ground 4 whilst it commences by suggesting that there was a failure to apply the case of Dube [2015] UKUT 00090 (IAC) the provision then relates back again to Section 117A to D. It is also suggested that the judge has not properly structured and dealt with the issue of proportionality. The judge has properly referred to the findings by Judge Parker and has considered all relevant evidence. There is no error in the judge's assessment of proportionality..
23. Consistent with the case of Devaseelan [2002] UKIAT 00702 that was the starting point for the judge's assessment of the circumstances of the Appellant and assessment of the proportionality issue. The judge has carefully looked at all the evidence and given valid reasons for coming to the conclusion set out. In the circumstances I find that there is no error of law in the way that the judge has dealt with the matter.
24. I therefore uphold the decision to dismiss this appeal on all grounds.

Signed

Date

Deputy Upper Tribunal Judge McClure