



IAC-PE-SW-V1

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

Appeal Number: IA/41139/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 18<sup>th</sup> June 2015**

**Decision & Reasons Promulgated  
On 30<sup>th</sup> July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**MR MUHAMMAD FARAZ NASEEM  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance

For the Respondent: Ms C Johnson - Home Office Presenting Officer

**DECISION AND ERROR OF LAW**

1. This is an appeal by Muhammad Faraz Naseem, a citizen of Pakistan, born 15<sup>th</sup> October 1988. He appeals against the decision of the Respondent made on 19<sup>th</sup> September 2013 to refuse leave to remain in the United Kingdom on the basis of his relationship with his spouse who is a British citizen. The Appellant appealed against that refusal and his appeal was allowed by First-tier Tribunal Judge Harris and the reasons for that decision set out in a determination issued on 27<sup>th</sup> May 2014. The Secretary of State, having been refused permission to appeal by the First-tier Tribunal,

was granted permission by the Upper Tribunal on 24<sup>th</sup> November 2014 and on 16<sup>th</sup> April 2015 having heard submissions I found that there was a material error of law in the determination of First-tier Tribunal Judge Harris and I set that decision aside with no preserved findings of fact. I concluded that there was very little evidence to support his finding that there are insurmountable obstacles to the Appellant's wife going with him to Pakistan.

2. Notice of the hearing on 18<sup>th</sup> June 2015 was, according to the papers I have before me, sent to the Appellant at what he has since confirmed is his home address, by first class post on 29<sup>th</sup> May 2015. It was listed for 2pm on 18<sup>th</sup> June. The day before the hearing I became aware that the appeal which had been listed for 10am on 18<sup>th</sup> June had been adjourned. My clerk phoned Mr Naseem to say to him that it would be possible for the appeal to be heard at 10am if that would suit him. Mr Naseem at that point said he was unable to speak with the clerk and that he should telephone him later in the day. My clerk did this. When he telephoned again Mr Naseem said that he had not been aware of the hearing because the letter had been opened by his wife who then kept it from him. He said he did not intend to come to court. He was encouraged to attend but was adamant that he would not be making an appearance. He did not appear. He made no request for an adjournment or for another date. Nothing further has been heard from him.
3. I now proceed to deal with the case on the papers.
4. No additional documentation has been received so I am dealing with this on the basis of the evidence that was before Judge Harris.
5. The view of the Secretary of State as set out in the refusal letter is that the requirements of Paragraph EX.1 of Appendix FM are not met. She concluded that although relocating together in Pakistan might cause a degree of hardship for the Appellant's partner she was not satisfied that there are insurmountable obstacles preventing her from doing so.
6. I have a statement from the Appellant which was prepared in March 2014. He states that he met Jodie Wheeler, his wife, in October 2011 and moved in with her in December 2011. They married in July 2012. He explains how he sought advice from the Visa and Appeal Service UK on the application to remain in the UK and was never told at any point that he would have to show that his wife could not go to live in Pakistan. Pakistani society is not accepting of non-Muslims. She would not enjoy any quality of life there and would have no support. He has no close family there as they all live in Sweden. His wife suffers from mental illness and had recently been diagnosed with recurring depressive illness for which she takes medication. She was at that time awaiting a course of cognitive behavioural therapy.
7. I have a statement from his wife prepared on 5<sup>th</sup> March 2014. She confirms her husband's account of their relationship and marriage. She says that she suffers from agoraphobia and panic attacks which make it difficult for

her to complete even basic day-to-day activities such as shopping or taking the dog for a walk alone. She has asthma and takes medication for that. She was unaware that she had to explain why she would not be able to move to Pakistan. She does not speak Urdu. She has never visited Pakistan and her only tie to that country is the fact that she is married to a Pakistani man. She says the idea that she could move to Pakistan is “laughable” as it is a Muslim country where she would have no freedom to live a normal life as a white Christian. She could fall foul of the anti-blasphemy laws. The travel advice from the Foreign and Commonwealth Office is that there is a high threat of terrorism, kidnap and sectarian violence. She does not believe she would get the treatment she needs for her mental illness.

8. I have a letter from a Consultant Psychiatrist of Greater Manchester West NHS sent to Miss Wheeler’s GP on 6<sup>th</sup> January 2014. The Consultant says that she had been assessed and any psychotic symptoms ruled out. He relates that she had mentioned that she has been suffering from depression since she was 13 and has suffered anxiety and panic attacks for years which have become worse over the past couple of years. She could not however identify any particular stressor or triggers that could have aggravated her panic attacks. She had mentioned that there had been stressors in her family. Her grandfather had stolen money from a disabled woman and this caused her to lose trust in people. He says that she suffers from a recurrent depressive illness along with agoraphobia with panic attacks. She has a long history of cannabis abuse but is currently motivated to reduce this and has agreed to engage with an organisation to help her come off it. She denied any thoughts, plans or intent to harm herself or others. She would be referred to Primary Care Psychological Therapy Services. She does not get on very well with her mother. Her mood had been low for years. She does not go out on her own. She waits for her husband to come and take her out. She enjoys watching TV and comedy programmes with her husband. She had been diagnosed with depression when she was 13 to 14 when she took an overdose.
9. Whilst I have set aside the determination of Judge Harris I think it is fair to consider the evidence that the Appellant and his wife gave at the hearing before him since I was not able to hear from them and no up-to-date information had been provided. There was mention at the hearing before Judge Harris of the Appellant’s wife’s poor relationship with her mother. The Appellant said that his wife had worked for a charity but had not worked for over twelve months. When he was asked why he had married knowing that it would be a requirement that he had to return to Pakistan he responded that he had fallen in love and just did not think about it. It was submitted on behalf of the Appellant by a litigation friend who had provided a small bundle for the hearing that it would not be reasonable to expect the Appellant’s wife to follow him to Pakistan. The difficulty is that Judge Harris said that he found the Appellant’s testimony to be “utterly unconvincing”. He noted that the Appellant had entered the UK for the purpose of taking a business management course but failed to complete it.

He described the reasons given for failing to do so as “most unimpressive”. Judge Harris did not question or doubt the credibility of the Appellant’s wife.

10. It is unfortunate that the Appellant chose not to attend the hearing to present his case and to attempt to allay the concerns expressed by Judge Harris about his credibility. It concerns me that his wife may have withheld the notice of hearing from him and that despite being made aware of the hearing the day before he chose not to come to court to state his case and made no request for an adjournment or for a different date. This leads me to question whether the marriage is subsisting. It seems reasonable to suppose that both he and his wife would want the appeal to be determined. I accept that it would not be easy for the Sponsor to relocate to Pakistan but she was aware when she married the Appellant that he was here as a student and would have to apply for further leave to remain. It seems there was no discussion at all about their future, but just an assumption that he would be allowed to remain here. I accept that she is British and has never been to Pakistan but I have no satisfactory evidence at all relative to the Appellant’s family circumstances in Pakistan and the availability of support there. The claim that all his family are in Sweden is not supported by evidence. Much of what is contained in the medical report is simply what the Sponsor told the Consultant. For example he says in his conclusion that she is suffering from agoraphobia but there is no reasoning for this diagnosis and no detail at all given. Clearly the Sponsor has some problems with depressive illness but there is no indication of serious illness. I have no up to date medical report and no idea what treatment the Sponsor is currently getting. There is no evidence that the medication or treatment which she requires would not be available in Pakistan.
11. The Appellant has failed to pursue his appeal. The threshold to establish insurmountable obstacles is a high one. It is not sufficient that the Sponsor does not want to go to live in Pakistan, that she is unaccustomed to the culture, that she would not feel safe there and that her family are all in the UK. The evidence before me does not establish that there are in all the circumstances insurmountable obstacles to the Sponsor going with the Appellant to Pakistan and there are in my view no compelling circumstances that would render the Appellant’s removal from the United Kingdom disproportionate to the need for effective immigration control in the UK in terms of Article 8 ECHR. .
12. The Respondent considered that it would be reasonable for the Appellant to return to Pakistan to make an application for entry clearance in accordance with the Immigration Rules. Presumably the Appellant does not want to do this because he and his wife could not meet the financial requirements of Appendix FM.

### **Notice of Decision**

The decision of the First-tier Tribunal having been set aside is replaced with this decision.

The appeal is dismissed under the Immigration Rules and on human rights grounds.

No anonymity direction is made.

Signed

Date: 25<sup>th</sup> July 2015

N A Baird  
Deputy Upper Tribunal Judge Baird