Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00837/2016

THE IMMIGRATION ACTS

Heard at Liverpool	**Decision & Reasons Promulgated**
On 19th April 2017	**On 05th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

AYAZ MOHAMMAD SYED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. W Bremang, instructed by Rayan Adams Solicitors
For the Respondent: Mr. G Harrison, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Tobin promulgated on 15th September 2016. The underlying decision that was the subject of the appeal before the First-tier Tribunal ("F*t*T") was the

decision of the respondent dated 11th December 2015 to refuse the appellant's protection and human rights claims.

2. The appellant is a Pakistani national. The appellant's claim for international protection is based on his fear that if returned to Pakistan, he would be killed by his family because he married an Indian woman, against their wishes. He claims that his family had arranged for him to marry his cousin. He also fears return to Nigeria, where he had lived for a number of years prior to his arrival in the UK.

3. A summary of the appellant's immigration history is set out at paragraph [4] of the decision of the F*t*T. A summary of the appellant's protection claim is set out at paragraph [5] of the decision of the F*t*T. The F*t*T Judge heard evidence from the appellant and had the opportunity of observing the appellant's evidence be tested in cross-examination. The Judge's findings and conclusions are to be found at paragraphs [16] to [32] of his decision. I do not repeat them in this decision, but I have carefully considered the findings made by the Judge, and his reasons for those findings. It is sufficient to note for the purposes of this decision that the Judge found the appellant's account to lack credibility. The Judge found, at [16], that the appellant's evidence is less than candid. The Judge concluded, at [17], that he was not convinced by the appellant's account of his family's purported hostility to an Indian Muslim woman. The Judge found, at [18] to [22], that the appellant gave an unsatisfactory and vague account of his father's political activities and that the appellant had given an account of his father still being angry and making a vague and unsubstantiated threat, as an effort to bolster deficiencies in the appellant's earlier story. At paragraph [23] of his decision, the Judge states;

> *"Having heard the appellant's account and his explanation for the alleged inconsistencies and anomalies in his asylum application, together with my assessment above, I do not believe the appellant's version of events. I do not find the appellant credible."*

4. The Judge concluded, at [26], that the appellant has not discharged the burden of proof on him by satisfying the F*t*T Judge that there is a reasonable degree of likelihood that should he be returned to Pakistan, the appellant would come within the Geneva Convention. The Judge concluded that the appellant's removal to Pakistan would not cause the UK to be in breach of its obligations under the Geneva Convention.

5. The Judge then turned to the appellant's claims under the ECHR. At paragraph [30], the Judge found that the appellant has failed to satisfy the Judge that there is a real risk that on his return to Pakistan, his life would be threatened and/or he would be exposed to torture or to inhuman or degrading treatment or punishment. As to the appellant's Article 8 claim, the Judge states, at [32]:

> *"Where a claim is based on Article 8 it should be considered, pursuant to the immigration Rules. The appellant failed to meet the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules because he had not lived in the UK continuously for at least 20 years. I accept that the appellant's wife may initially have to apply for a temporary visa for Pakistan – or even a succession of temporary visas until her immigration status becomes established in Pakistan. I do not envisage any difficulties for the children returning to their country of nationality. Even taking into account this inconvenience, I do not consider that returning the appellant to Pakistan would cause the UK to be in breach of Article 8 ECHR. Therefore, for these reasons, and also for the reasons set out above, I also dismiss this limb of his appeal.*

6. The appellant contends in the grounds of appeal that there were points which were not considered by the F*t*T Judge tending to suggest that the appellant has a very strong Article 8 claim, either within or outwith the Immigration Rules. The appellant claims that his home country, if any, is Nigeria. It is said that the appellant has visited Pakistan very few times, and he never lived in Pakistan on a permanent basis, apart of short family visits. Furthermore, it is, or should have been obvious, that there would be very significant obstacles to the appellant's integration to

Pakistan for the purposes of paragraph 276ADE (1)(vi) of the immigration rules. The appellant claims that another relevant factor is that if the appellant were returned to Pakistan, he would not be returned with his family. His wife is a citizen of India. The appellant claims that at the very least, in the short term, there would be extremely significant interruption to family life involving very young children.

7. Permission to appeal was granted by F*t*T Judge Dineen on 13th January 2017. The matter comes before me to consider whether the decision of the F*t*T involved the making of a material error of law, and if so, to remake the decision.

8. Before me, Miss Bremang relied upon the grounds of appeal and submitted that the Judge has failed to adequately address or consider whether the requirements of paragraph 276ADE(1)(vi) of the immigration rules are met. Furthermore, there is no consideration by the Judge of the Article 8 claim outside the rules. She submits that there are very significant obstacles to the appellant's integration into Pakistan if he is required to leave the UK. She submits the appellant himself has only lived in Pakistan for a limited time and he would be returning to Pakistan with a wife that has never lived in Pakistan. She submits that there would also be the cultural implications of an Indian woman living in Pakistan, but accepted that there is no objective evidence that an Indian woman, who herself is a Muslim, would face any hostility. She also accepts that there is no evidence that the appellant's wife could not go and live in Pakistan, although she is likely to have to apply for some form of temporary leave to enter Pakistan, to begin with. The only evidence of the difficulties that the appellant's wife might face, that she was able to refer to is an extract from the Hindustani Times dated 11th May 2015. The article refers to the problems that nationals of India and Pakistan could face when travelling between the two countries. Miss Bremang submits that the appellant's children who are now 5, 3 and 1, are at

nursery. Given their young age, she accepts that they are not in the formative years of their education.

9. The respondent has filed a rule 24 response dated 26th January 2017. Before me, Mr Harrison relied upon the Rule 24 response. He submits that the appellant did not advance an Article 8 case expressly on the basis that the appellant had spent little of his life in Pakistan. He submits the appellant's claim that "it should have been obvious this was a very significant obstacle" is misplaced. Mr Harrison submits that whilst the F*t*T Judge does not make an express reference to 276ADE(vi) at paragraph [32] of his decision, there is a general finding by the Judge that removal would not breach Article 8.

Discussion

10. The grant of permission to appeal is limited to the decision of the F*t*T Judge as to the Article 8 claim. That has been the focus of the submissions before me.

11. The Judge refers, at paragraph [32], to the requirements of paragraph 276ADE(1)(iii) of the Immigration Rules. It is uncontroversial that those requirements cannot be met. There is however, no express reference to paragraph 276ADE(1)(vi) in the decision of the F*t*T Judge. It is therefore unclear whether the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules were considered by the Judge and to that end, I find there to be an error of law in the decision of the F*t*T.

12. No further evidence was relied upon by the appellant, and there was no application made pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. The findings made by the Judge are not challenged by the appellant, and so I proceed to re-make the decision.

13. Paragraph 276ADE(1)(vi) requires that an individual must be aged 18 years or above, have lived continuously in the UK for less than twenty

years, but there would be very significant obstacles to that individual's integration into the country to which he would have to go if required to leave the UK. Guidance on integration has been given by the Court of Appeal in **SSHD –v- Kamara [2016] EWCA Civ 813**. Albeit in the context of a foreign criminal, Sales LJ held, at [14]

> *"…The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."*

14. Integration is one limb of the test. The other is whether there are very significant obstacles, and on that issue, guidance was given by the Upper Tribunal in **Treebhawon [2017] UKUT 00013 (IAC)** at paragraph [37].

> *"37. The other limb of the test, very significant obstacles, erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context."*

15. It was uncontroversial that the appellant is a Pakistani national. His removal will be to Pakistan and not Nigeria. I reject the claim in the grounds of appeal that the appellant's "home country, if any, is Nigeria.". The claim is entirely misconceived. The appellant is a Pakistani national. Pakistan is his country of nationality.

16. The appellant's own evidence is that he is married to an Indian national, but she is, like the appellant, a Muslim. The Judge records at paragraph [17] of his decision, the appellant's evidence that his children have taken his nationality – Pakistani. There is nothing in the evidence or the findings made by the Judge that the appellant has no understanding of

how life in Pakistani society is carried on. I acknowledge that the appellant has spent considerable periods of his life in Nigeria, however he is a Pakistani national and he has also spent time in Pakistan. The appellant's own evidence is that his father has a political profile and the appellant will therefore have a good awareness of life in Pakistan and a capacity to participate in Pakistani society, so as to have a reasonable opportunity to be accepted there, and to be able to operate on a day-to-day basis in that society.

17. The "very significant obstacles to the appellant's integration into Pakistan" that are relied upon by the appellant are that the appellant himself has only lived in Pakistan for a limited time. He would be returning to Pakistan with a wife that has never lived in Pakistan. That, in my judgement, does not begin to amount to very significant obstacles to the appellant's integration into Pakistan. It follows that in my judgement, the appellant is unable to meet the requirements of paragraph 276ADE(1)(vi) of the immigration rules.

18. The proposed removal of the appellant from the UK would be an interference with the appellant's right to respect for his private and or family life and the removal of the appellant from the United Kingdom will inevitably interfere with his private and/or family life. The interference is in accordance with the law and necessary in a democratic society. The crucial question is whether the interference is proportionate to the legitimate end sought to be achieved.

19. I have had careful regard to the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 and note that the best interests of the appellant's children, must be a primary consideration. I have also had regard to the matters now set out in section 117B of the Nationality, Immigration and Asylum Act 2002.

20. The appellant's children are, like the appellant, nationals of Pakistan. Miss Brenang sensibly accepts that they are not in the formative years of

their education and there is no evidence that any of the children have any particular needs beyond the need to be brought upon in a safe environment. It is of course in their best interests to be brought up by their parents. Like the F*t*T Judge, I do not envisage any difficulties for the children returning to their country of nationality. I find that the appellant, his wife and their children can be expected to re-establish themselves in Pakistan as a family unit.

21. The appellant relies upon the fact that he would be returning to Pakistan with a wife that has never lived in Pakistan. Miss Bremang conceded, rightly in my judgement, that there is no objective evidence that an Indian woman, who herself is a Muslim, would face any hostility. The F*t*T Judge found, at [32] that the appellant's wife may initially have to apply for a temporary visa for Pakistan – or even a succession of temporary visas until her immigration status becomes established in Pakistan. Miss Bremang accepts that there is no evidence that the appellant's wife could not go and live in Pakistan, although she is likely to have to apply for some form of temporary leave to enter Pakistan, to begin with. I have carefully read the extract from the Hindustani Times dated 11th May 2015, upon which the appellant relies. The article describes the process for applying for a visa and making travel arrangements between Pakistan and India as being "like walking into a minefield.". The article states:

> *"..In the case of an Indian visa, the average processing time for an application is 35 days though the process can sometimes take longer. The process on the Pakistani side takes just about as long, unless of course there are folks in Islamabad who do not want you to visit."*

22. The F*t*T Judge rejected the appellant's account of his fear of his family. I find that there is no reason to believe that the appellant's family would stand in the way of any application that the appellant's wife may make to enter Pakistan. The F*t*T Judge accepted, as do I, that the appellant's wife may initially have to apply for a temporary visa for Pakistan – or even a succession of temporary visas – until her immigration status becomes

established in Pakistan. The extract from the Hindustan Times that the appellant himself relies upon, states that the average processing time for an application is about 35 days. Any interference with the appellant's family life with his wife and children would be for a short period whilst any necessary visa is obtained.

23. I find that the removal of the appellant to Pakistan would not amount to a disproportionate interference with his right to a family and or private life.

24. For the avoidance of any doubt, the decision of the F*t*T Judge to dismiss the appeal on asylum grounds, and humanitarian protection grounds stands, for the reasons given in his decision.

25. I re-make the decision in the Article 8 appeal, and dismiss the appeal under the immigration rules and on human rights grounds.

Notice of Decision

26. The decision of the F*t*T Judge to dismiss the appeal under the immigration rules and on human rights grounds is set aside.

27. I remake the decision, and:

a. Dismiss the appeal under the immigration rules;

b. Dismiss the appeal on human rights grounds.

Signed Date 28th July 2017

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal. There can be no fee award.

Signed

Deputy Upper Tribunal Judge Mandalia