Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08472/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19 October 2017	**On 31 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MR SEFATULLAH HABIBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Vidal, counsel, instructed by Haris Ali Solicitors
For the Respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Afghanistan, appealed against the Respondent's decision, dated 28 June 2016, to refuse an asylum claim and in addition rejected claims based on private life or family life under the Rules and also with reference to Article 8 ECHR.

2. The matter came before First-tier Tribunal Judge J H H Cooper (the Judge), whose decision [D] on 24 March 2017, dismissed the appeal on asylum and human rights grounds. Before the Judge experienced counsel, Mr Muquit, representing the Appellant conceded that the claim could not be pursued in relation to the Refugee Convention, Humanitarian Protection, and Article 3 ECHR grounds in terms of risks on return. Mr Muquit confined the case to essentially arguing that the claim should be allowed under the provisions of Article 8 ECHR. It was accepted at that stage that at the date of application the Appellant's wife, a UK national, of Pakistan origin, was under the age of 18 and therefore could not succeed under the Immigration Rules.

3. The matter proceeded on that basis and the Judge set out the matters particularly relied upon by the Appellant and on behalf of his wife concerning her personal difficulties, her family circumstances and her current educational undertaking and aspirations. The findings set out, with reference to the case of Agyarko [2017] UKSC 11, a general consideration of the material matters was arrived at and in [D 68] the Judge summarised the particular factors advanced.

4. It is fair to say that the Judge's decision does not suggest nor does it appear of the grounds that issues of difficulties that the wife of the Appellant might face on return in finding employment or the unlikelihood of her being able to pursue the higher education course that she would have followed in the United Kingdom, were not specifically pressed by evidence as to the availability of employment or the effects of societal mores confining the degree to which women can work in Afghanistan nor did it appear there was any argument or evidence on what education aspirations of the Appellant could be continued in Afghanistan.

5. It is true to say that those two matters of employment and education were not dealt with in the summary [D68] but it seemed to me when the Judge

so thoroughly addressed the other issues raised it is unlikely that he would have omitted to refer to evidence or issues if they had been before him. Those two issues would have been addressed if there was a sustainable argument being pressed on behalf of the Appellant and his wife.

6. Be that as it may, the position was that permission was refused in the First-tier Tribunal but on renewal granted by Upper Tribunal Judge Canavan on 29 August 2017 in which she stated:

> "Although there appears to be no evidence to indicate that the country conditions were argued as part of the case of the First-tier Tribunal hearing, and it appears no background evidence was submitted in support of the appeal, it is at least arguable that the security situation in Afghanistan should have been well-known to an experienced Judge and was a relevant factor that needed to be considered in assessing whether there were 'insurmountable obstacles' to the Appellant continuing his family life with his British wife in Afghanistan. In HN & SA (Afghanistan) v Secretary of State for the Home Department [2016] EWCA Civ 123 the Court of Appeal noted the deterioration in the security system. …"

7. It seemed to me that this is not a sustainable challenge to the decision, first, because it was not a matter pursued and nor indeed was it so self-evident on the basis raised that it could be called a '**Robinson** obvious' point that should have been addressed. The position is that the Appellant and his wife faced return to Kabul: The circumstances there did not support the general conclusion that such are conditions there that he and she could not return there because of the dangers. If that had been the argument and it was so manifestly obvious it seemed to me highly unlikely that Mr Muquit would have failed to address it. It simply is not susceptible to the point that it was an oversight.

8. Upper Tribunal Judge Canavan continued in the grant as follows:

> "Nor was there any assessment of the impact on the Appellant's wife considering publicly available information relating to the treatment of women in Afghanistan. No consideration was given to whether, at the date of the hearing, the developments in the Appellant's circumstances meant that he might now meet the eligible requirements of the Immigration Rules, which would have provided an indication of the weight to be given to the Respondent's policy as expressed in Appendix FM when assessing where a fair balance should be struck. The grounds are not well-particularised but do at least justify further consideration at a hearing."

9. It seemed to me that there are a number of points that can be made as to this matter. First and foremost, the fact is that Appendix FM as had been raised falls to one side, as was conceded. It was not pursued as an issue before the Judge that it was in effect a near miss and then with reference to Mustafa [2016] UKUT 27 that it nevertheless was a relevant consideration to press in the Article 8 ECHR case because circumstances had changed through the passage of time between the date of decision and the date of the hearing before the Judge. Furthermore, it seemed to me that there were other considerations, even if the age matter was addressed, which gave rise to concerns as to whether or not Appendix FM would be applicable particularly with reference to Appendix FM paragraph EX.1.

10. Therefore, the Judge, I take the view, would and did properly have regard to the case of Agyarko and looked at the particular circumstances of the case. I do not, whilst recognising that [D68] does not summarise her employment or educational aspirations it did not appear on the face of it nor was it supported by the grounds that education and/or employment were issues that actively were being pursued. I might have reached a different decision in the appeal had this case been before me but that is

not the basis on which I interfere in decisions simply because I might have reached a different view.

11. Ms Vidal has strenuously pressed the merits of her points, with which I might indeed agree in terms of how I would have considered this matter were I considering it for my own part as a First-tier Judge, but I do not find that that discloses an error by the Judge in dealing with this matter in his decision. Accordingly I do not find that any other Tribunal seized of the same material and presented with the arguments in the same way would have reached a different conclusion.

NOTICE OF DECISION

The appeal is dismissed.

No anonymity direction is made.

Signed Date24 October 2017

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 24 October 2017

Deputy Upper Tribunal Judge Davey