



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25628/2016

THE IMMIGRATION ACTS

Heard at Field House
On 6 July 2018

Decision & Reasons Promulgated
On 2 August 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR MUHAMMAD ATIQUE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Chohan, Counsel, instructed by Reliance Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 1 March 2018 Judge R L Walker of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a citizen of Pakistan, against the decision made by the respondent on 4 November 2016 refusing leave to remain in the UK.
2. The grounds are twofold, one general, one particular. The general ground contends that the judge erred by conducting an inadequate proportionality assessment and failing to take material factors into account. The particular ground complains that the

judge erred in finding that the appellant had failed to show he had a genuine, subsisting relationship with his British citizen partner, when that was not disputed by the respondent in the refusal decision.

3. I express my gratitude to both representatives for their submissions which covered all salient points.
4. It is convenient to take the particular ground first. I consider it devoid of arguable merit. It is true that in the refusal decision the respondent did not dispute that the appellant was in a genuine and subsisting relationship. But that was in November 2016 and the judge was obliged to consider the appellant's human rights circumstances at the date of the hearing, which took place on 1 March 2018. The appellant did not attend nor did any representative on his behalf, despite the fact that the appellant's bundle had recently been filed. No communication was received by the Tribunal to explain the appellant's absence. Having noted these facts, the judge proceeded to analyse the appellant's current situation, first under the Immigration Rules and then outside the Rules. Mr Chohan submits that it was wrong of the judge to state at paragraph 22 that the appellant "has also failed to show that he has a current genuine and subsisting relationship with his partner who is in the UK and is a British citizen", given that the respondent was satisfied about this relationship in the refusal letter. However that ignores the judge's use of the adjective "current". The factual justification for this finding is set out later in the decision when the judge directly considered the appellant's family and private life circumstances. At paragraphs 25-29 the judge stated:

"25. The first step is to ascertain whether the Appellant has any established family or private life in the UK. Whilst the Appellant's bundle contains a substantial amount of documentation there is nothing recent at all from his wife. There is no witness statement from her and she has not attended today. If the Appellant's marriage and relationship with his wife was continuing then I would certainly expect her to be present today to support his Appeal as the main plank of his application and the Appeal is his marriage and relationship to her.

26. The bundle does include documents relating to his wife's address and finances. However, these are all of some vintage and there is nothing recent. Her bank statements are included but only run from 2015 to March 2016. Her payslips are only for the periods September to October 2015. They only document in joint names is a council tax bill dated 15 December 2015.

27. The various documents show the Appellant and his wife at different addresses. His payslips from August 2015 to January 2016 show him at [address not specified here]. Whereas during the same period his wife is at [a different address not specified here].

28. The Appellant's further Grounds of Appeal say that at the time of the offences the Appellant was being sexually deprived and ridiculed by his wife for not getting her pregnant. This points towards the marriage being in some difficulty. This statement in the Grounds has not been countered in any way by any evidence of the marriage subsisting.

29. As there has been no recent evidence about his wife or their relationship then the Appellant has not shown that he has a current established family life with her. I accept that he will have some degree of an established private life as he has been in the UK now for nearly 9 years. Nevertheless, I do not find that the Respondent's decision would cause interference with either the family or private life of the Appellant and which would be of such gravity as to engage Article 8."

5. These findings were ones that were reasonably open to the judge to make.

6. Mr Chohan contends that in reaching these findings the judge acted with conspicuous unfairness, but (i) the appellant chose not to attend or to attend with his partner; (ii) the submission made by the HOPO at the hearing (Mr Walker produced a note signed by the HOPO concerned) was specifically to the effect that in view of the lack of up-to-date information there was insufficient evidence to show that there was family life still subsisting and in consequence the judge had been informed that the respondent no longer stood by the statement about the existing nature of the couple's relationship in the refusal decision; and (iii) the appellant in his grounds of appeal has not sought to produce any Rule 15 evidence seeking to provide any up-to-date evidence regarding the couple's relationship.

7. Turning next to the general ground, in view of the judge's justified finding that there was no subsisting family life, the appellant could only rely on his private life circumstances. As regards these, the judge found at paragraph 23 that:

"23. With regard to his private life I do not accept that there would be any significant obstacles to his reintegration into Pakistan. The major part of his life and all of his formative years have been spent there he has lived in Pakistan for over 40 years and so will be fully aware of the customs, culture and language. His witness statement and the Grounds of Appeal give general rather than specific details of his life in the UK saying he has established strong links and connections with society. He has not explained these strong links or connections."

8. In light of this finding the judge's assessment of the appellant's Article 8 circumstances outside the Rules at para 31 that the respondent's decision was a proportionate one, an adequately reasoned one and one entirely within the range of reasonable responses. Furthermore, in the appellant's case not only had he never been in the UK with indefinite leave to remain, but he had been convicted on two occasions within a 12-

month period of sexual assault. The judge's assessment of this background is set out at paragraphs 20–21 as follows:

“20. The Appellant has been convicted on two occasions within a 12-month period of sexual assault. The second conviction includes four separate charges of sexual assault and also a failure to comply with notification requirements. It is this second conviction which resulted in an imprisonment for 12 weeks. I agree with the Respondent that the Appellant's conduct has been such that it is not conducive to the public good for the Appellant to remain in the UK. I have taken into account his witness statement and which claims he has reformed but there has been no corroborative evidence of this and I am concerned that the Appellant has not attended today and neither has his wife.

21. The Appellant's witness statement and the further Grounds of Appeal state that at the time of the incidents the Appellant was under a substantial amount of stress and depression. He was in this state due to having been indebted to the council and his landlord refusing to repay his deposit. In addition, the Appellant was being sexually deprived and ridiculed by his wife for not getting her pregnant. Whilst these problems could certainly have been a trial for the Appellant they were no excuse or reason for him committing sexual assaults. The Appellant in his witness statement says he fully regrets and is ashamed of his decisions. However, there is no reference at all in his evidence about any sympathy or concerns for his victims and the possible effects the assaults may have had on them.”

9. Not only did this background mean that the appellant was properly found not to meet the suitability requirements of the Rules; it also demonstrated that there was a greater public interest in denying him leave to remain under Article 8 in light of the legitimate aim on the part of the respondent to prevent disorder and crime when considering the maintenance of immigration control.
10. For the above reasons the judge did not err in law and his decision to dismiss the appellant's appeal is upheld.

No anonymity direction is made.



Signed Date 26 July 2018

Dr H H Storey
Judge of the Upper Tribunal