Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/11709/2017
HU/11713/2017
HU/11716/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 April 2019	**On 5 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

ALI [A] (1)
NAVJOT [R] (2)
[A A] (3)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms P Solanki, Counsel
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS ON ERROR OF LAW

The first appellant is a citizen of Pakistan and the second appellant is a citizen of India. They married on 26 March 2012. The first appellant came to the UK in 2007 in order to study and his last grant of leave expired in December 2012. The background of the second appellant is similar. In November 2012 the first

© CROWN COPYRIGHT 2019

appellant claimed asylum but his application was rejected and he became appeal rights exhausted in July 2013. The third appellant was born in the UK on [~] 2013. The appellants submitted an application on article 8 grounds in August 2016. This led to the decision under appeal, dated 20 September 2017.

The respondent accepted the family relationship but considered the family could be returned to Pakistan. There were no very significant obstacles to integration in Pakistan. Nor were there exceptional circumstances to warrant a grant of leave outside the rules. The appellants appealed. The grounds argued there were factual errors in the respondent's decision and the third appellant's best interests had not been considered. The grounds stated that it was possible the third appellant was stateless.

The appeal was heard by Judge of the First Tier Tribunal Chohan at Birmingham on 2 May 2018. In a decision promulgated on 15 May 2018, he dismissed the appeals. He found it was in the best interests of the third appellant to remain with his parents. He found it was likely the third appellant was Pakistani by descent. He found there was no evidence to establish that the second appellant would not be admitted to Pakistan with her husband. Relying on the decision of the judge dismissing the first appellant's asylum appeal, he found there was not a real risk of appellants facing persecution as a mixed-faith couple. There were no very significant obstacles to integration.

The appellant sought permission to appeal, arguing the judge had erred by failing to consider paragraph EX.1 of the rules and by failing to consider whether there were unjustifiably harsh consequences so as to render the decision disproportionate. Permission was refused by the First-tier Tribunal, which pointed out that there was no basis for contending that paragraph EX.1 applied to the appellants. The application was renewed on similar grounds and permission was granted by the Upper Tribunal. It was arguable the judge had erred by not taking into account background evidence when considering whether removal would result in unjustifiably harsh consequences.

The respondent has not submitted a rule 24 response. Ms Solanki submitted a note prior to the hearing accepting that EX.1 does not apply to the appellants and indicating the appeals would be argued on the basis of paragraph 276ADE(1)(vi) of the rules and outside the rules.

I heard submissions from the representatives on the issue of whether the judge's decision contains a material error of law. I shall only set these out as is necessary to explain my decision.

Ms Solanki took me to the relevant paragraphs of the judge's decision. She argued it was clear that the difficulties caused by discrimination against mixed faith couples had been argued and that the judge appeared to have conflated the risk of persecution, which had been rejected in an earlier appeal, with the test of very significant obstacles. He had not engaged adequately with the issues. However, she acknowledged that background evidence on interfaith marriages had not been provided to the judge.

Ms Everett argued the judge's decision does not contain an error of law.

Having considered the submissions made I have concluded that the judge's decision does not contain an error of law and should be upheld. My reasons are as follows.

Ms Solanki was right to distance herself from the argument put forward initially which was done without having had sight of all the papers. Paragraph EX.1 of the rules applies where the applicant has a genuine and subsisting relationship with a partner who is in the UK *and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection*, and there are insurmountable obstacles to family life with that partner continuing outside the UK. None of the appellants have leave.

As Ms Solanki recognised in her note, the only route to success for the appellants would be under paragraph 276ADE(1)(vi) of the rules or outside the rules.

It is important to keep in mind how the case was put to the judge. I have seen the skeleton argument of Mr Pipe, who appeared as counsel for the appellants in the First-tier Tribunal. This shows that the appellants argued the third appellant was stateless because his birth had not been registered by the Indian authorities, that it was in the best interests of the third appellant to allow the family to remain in the UK and that the decision was disproportionate to the appellants' right to enjoy family and private life.

It does not appear that Mr Pipe pursued his argument about the third appellant being stateless because the presenting officer clarified that it was proposed to remove the family to Pakistan and evidence was handed up from the Government of Pakistan's Directorate General of Immigration & Passports showing that children of Pakistanis born outside Pakistan were citizens by descent. The judge went on to make findings on the best interests of the third appellant which have not been the subject of challenge. The judge was satisfied the family would be able to enter Pakistan.

Paragraph 12 of the decision makes clear that it was argued that the appellants would face discrimination in Pakistan due to their interfaith marriage. The first appellant claimed he might face imprisonment. The judge then drew on findings made by Judge of the First-tier Tribunal Mace, whose decision dismissing the first appellant's asylum appeal was dated 14 April 2013. Judge Mace was not satisfied the first appellant had shown any risk to his life or wellbeing. She accepted society may disapprove but she was not satisfied it had been shown they would be subjected to mistreatment amounting to persecution or serious harm.

It is correct to point out that Judge Mace was asking herself a different question. Of course, it is not necessary to show a real risk of persecution in order to show there are very significant obstacles to integration. If the judge had conflated the two tests, he would have made a material error.

However, a correct reading of his decision shows he was careful to avoid doing so. In paragraph 13 he explained that he was not considering an article 3 claim. The relevance of Judge Mace's findings was that they were made on the lower standard of proof.

At the hearing in the First-tier Tribunal the first and second appellants adopted witness statements. The first appellant stated that his wife would not be accepted in Pakistan because she refused to change her religion. That has not been disputed. The first appellant claimed they would not be able to enter Pakistan and his wife and son would not be granted status there. As noted, the judge rejected those claims. In her statement, the second appellant make similar points. The judge also had two letters from friends of the first appellant giving their opinions that the family might be killed in Pakistan. Crucially, there was no background evidence before the judge about discrimination against interfaith couple. Ms Solanki showed me the CPIN Pakistan: Interfaith marriage, January 2016, and the CIG Pakistan: Women fearing gender-based harm/violence, February 2016, but the judge could not be expected to have taken these into account without being provided with copies.

Given the extremely limited nature of the evidence put forward and, given the background of Judge Mace's findings on the topic, I do not consider the judge erred by misdirecting himself in law or by failing to consider the evidence adequately. He was entitled to find as he did.

It is also relevant to note that Judge Mace made findings which were not set out in the judge's decision but which he must have had regard to. She did not accept that the first appellant's family's reaction had been "extreme" (paragraph 76), the first appellant's evidence about what he feared in Pakistan was "vague and evasive" (paragraph 79), the appellant had initially said he could settle in Pakistan, India or the UK, which Judge Mace found inconsistent with his fear of harm from the community in general (paragraph 85), and, the background evidence showed difficulties for parties to interfaith marriages but the evidence focused on the position of females (paragraph 90). She also dealt with article 8 outside the rules. She concluded that, whilst there would be some difficulties, it was reasonable to expect the second appellant to follow her husband to Pakistan and the decision to remove him was proportionate.

Whilst further time had passed there was little which could have entitled the judge to depart from those findings on article 8. The birth of the third appellant was adequately considered. The judge was entitled to find family life could continue in Pakistan.

As for private life, the judge set out the relevant factors in paragraph 14 of his decision. He plainly had the public interest factors set out in section 117B of the 2002 Act in mind. He reached a decision he was perfectly entitled to reach on the evidence.

For these reasons, the decision of Judge Chohan dismissing the appeal on article 8 grounds shall stand and the appellants' appeal against his decision is dismissed.

Notice of Decision

The appeal is dismissed. The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeals shall stand.

Signed Date 4 April 2019

Deputy Upper Tribunal Judge Froom