Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00406/2019

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 25th July 2019	**On 02nd August 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

MUHAMMAD KALEEM AKHTAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Moksud, agent for International Immigration Advisory Services
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against a decision of Judge A J Parker (the Judge) of the First-tier Tribunal (the FTT) promulgated on 29th April 2019.

2. The Appellant is a national of Pakistan born 23rd October 1990. He appealed to the FTT following the Respondent's decision dated 14th November 2018 to refuse his asylum and human rights claim.

3. The Appellant's claim was that he would be at risk if returned to Pakistan because when he was 16 he was told that he had to enter into an engagement which he refused. In December 2008 he was attacked by four people as a result of his refusal to enter into the engagement. In April 2009 he was again attacked by the girl's brother and other people. In October 2009 he was stabbed by a man. Following that incident he moved to another area of Gujarat. He reported the first two attacks to the police but not the third. He left Pakistan in March 2011 and travelled to the UK with leave as a Tier 4 Student.

4. The Appellant married a British citizen. There was an Islamic marriage in the UK on 4th November 2013 and a registry office marriage on 20th March 2014.

5. Following the refusal of his claim the Appellant appealed to the FTT. The judge took the view that the Appellant could not rely upon EX.1.(b) of Appendix FM as the Respondent in the refusal decision had found that he did not satisfy the definition of a partner. This was notwithstanding that the Appellant had entered into a marriage, and therefore was the spouse of a British citizen.

6. The judge took the view that this was a new matter that had not been considered by the Respondent and refused to deal with it as the Respondent did not give consent. The judge refused an application for an adjournment.

7. The judge heard evidence from the Appellant and found him to be incredible. The judge did not accept that the Appellant would be at risk if returned to Pakistan.

8. In the alternative the judge found that the Appellant had a reasonable internal relocation option in Pakistan.

9. The judge found that the Appellant could not satisfy the Immigration Rules in relation to having a partner or child. Article 8 was considered. The judge accepted the Appellant and his wife have a family life. The judge considered section 117B of the Nationality, Immigration and Asylum Act 2002.

10. The judge also considered paragraph 276ADE(1)(vi) and did not find that the Appellant would encounter very significant obstacles to integration in Pakistan.

11. In conclusion the judge did not find that there were any exceptional circumstances, and found that the Respondent's decision was proportionate. The appeal was dismissed on all grounds.

The Application for Permission to Appeal

12. In summary it was submitted that the judge had erred in finding that the Appellant would not be at risk. Inadequate reasons had been given for doubting the Appellant's credibility. The judge should have found that the Appellant is a member of a particular social group.

13. The judge had made an adverse finding because of the Appellant's delay in claiming asylum and it was submitted that he had erred in making this finding.

14. It was submitted that the judge had given inadequate reasons for concluding there was a reasonable internal relocation option.

15. It was submitted that the judge had erred in considering Article 8. He had considered the issue of "very significant obstacles" very briefly and the judge did not consider the interference with the family life that the Appellant and his wife had established.

The Grant of Permission to Appeal

16. Permission to appeal was granted by Judge Welsh of the FTT in the following terms;

> "2. The grounds assert that the judge erred in his assessment of Article 8, in that he had no regard to the accepted fact that the Appellant was in a relationship with his British partner. The decision states that the Respondent had considered Article 8 in the context of the Appellant having a relationship with an unmarried partner, whereas in fact he is married to the woman concerned. On that basis, the judge found that the marriage was a new matter and declined to adjourn in order for the Article 8 issue to be revisited by the Respondent.
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> 3. The judge went on to assess Article 8 and accepted that the Appellant enjoys family life with his wife and that this family life would be interfered with by his removal. However, it is arguable that the judge failed to assess the impact on the Appellant's partner and failed to give any reason why the interference with that family life was proportionate.
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> 4. Other grounds were pleaded and permission is granted on all grounds."

17. Following the grant of permission, directions were issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision should be set aside.

My Analysis and Conclusions

18. At the oral hearing before me Mr Moksud submitted that the judge had erred by failing to consider Appendix FM, and the judge was wrong to take the view that the Appellant's marriage to a British national was a new matter and he had no jurisdiction to consider it.

19. With reference to asylum Mr Moksud submitted that the judge erred by failing to consider whether there was a sufficiency of protection, and failed to adequately consider internal relocation.

20. It was submitted that the judge had erred by failing to give adequate reasons for finding the Appellant's claim incredible.

21. In addition, with reference to Article 8, the judge had failed to give adequate reasons as to why it was proportionate for the Appellant to be removed from the UK.

22. Mr McVeety accepted that the judge had erred in law in relation to the Appellant's marriage. It was accepted that this was not a new matter and should not have been

regarded as such. It was not clear why the Presenting Officer before the judge would not consent to the matter being dealt with.

23. Mr McVeety submitted that the error was not material because had the judge considered EX.1.(b) and insurmountable obstacles, there was no evidence before him to demonstrate that insurmountable obstacles existed to family life continuing abroad. The Respondent's position was that the FTT decision disclosed no material error of law.

24. I deal firstly with credibility. I find no material error of law. The judge gave adequate reasons for finding the Appellant incredible at paragraphs 20 – 24. The judge pointed out that the Appellant had been asked what happened to his fiancée and he stated that he did not know although he had been in contact with his parents as recently as twelve months prior to the FTT hearing. He had not asked as to her whereabouts. The judge found this incredible, on the basis that the Appellant claimed his life was at risk having been attacked on three separate occasions and reported two of these attacks to the police.

25. The judge noted that the Appellant had claimed that several members of his former fiancée's family are members of the National Assembly in Pakistan but there was no evidence to support that contention, and such evidence would have been easy to obtain. There was no medical evidence to confirm the Appellant's account of being stabbed or beaten. There was no evidence of First Information Reports.

26. The judge was entitled and did take into account the fact that the Appellant delayed making a claim for asylum. He made several applications for leave to remain, all of which were refused. He made no asylum claim. He was encountered during an immigration enforcement visit in 2016 but made no asylum claim. In that year he made a human rights application but did not claim asylum until May 2018. The judge was entitled to find that the Appellant had not given a satisfactory explanation for his delay in claiming asylum.

27. I am satisfied that the judge considered all the evidence in the round, although he makes reference to section 8 of the 2004 Act prior to setting out his findings on credibility. It should be remembered that section 8 of the 2004 Act should not be a starting point for an assessment of credibility.

28. The judge refers to internal relocation briefly, setting out case law at paragraphs 26 – 27. He does not then go on to adequately consider the Appellant's option of internal relocation. In this case I do not find this to be a material error because the primary finding by the judge is that the Appellant is not credible and would not be at risk in his home area.

29. I do find that the judge erred in law in considering Article 8. The judge was wrong to find that the Appellant's marriage to a British citizen should be regarded as a new matter. This was not the case. The Appellant in his screening interview in answer to question 1.19 confirmed that he underwent a civil marriage with his spouse on 20th March 2014. The screening interview took place on 29th May 2018.

30. The Appellant in his asylum interview, which took place on 16th July 2018 confirmed, in answer to question 11, that he married in the UK at Oldham Registry Office on 20th March 2014.

31. The Respondent in the refusal letter at paragraph 21 noted that the Appellant claimed to have married in a registry office on 20th March 2014. It is therefore extremely difficult to understand why, when the Respondent considered the Appellant's application under the partner route at paragraphs 98 – 99 of the refusal letter, that the conclusion was reached that the Appellant did not meet the definition of a partner as defined in GEN.1.2 of Appendix FM. This appears to be on the basis that he had not been living with his partner for two years prior to claiming asylum on 16th May 2018. There was no need to prove that, as the Appellant and his spouse satisfied the definition by reason of being married.

32. That error was compounded at the FTT hearing. The documents before the FTT contained the Appellant's marriage certificate. It was therefore clearly not a new matter, and should initially have been considered by the Respondent, and should have been considered by the FTT.

33. The judge should have considered EX.1.(b) which for ease of reference I set out below;

> "(b) 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."

34. There was no dispute that the Appellant had a genuine and subsisting relationship with his spouse, and no dispute that she is a British citizen. Insurmountable obstacles are defined in EX.2 which is set out below;

> "For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

35. As the judge did not specifically consider insurmountable obstacles that is an error of law. I have to consider whether it is material.

36. I conclude that it was not. I make that decision because I have examined the evidence that was before the judge. I find nothing in the Appellant's witness statement to indicate insurmountable obstacles to family life continuing outside the UK. The Appellant's case was that he would be at risk. The judge found that not to be the case.

37. I have also examined the witness statement of the Appellant's wife. In relation to insurmountable obstacles she does not make any reference to returning to Pakistan with him. In her witness statement she states that they want to live together in the

UK, she relies upon him, and is emotionally attached to him, and she could not bear to think of obstacles that they would be faced with if he was returned to Pakistan.

38. There was no satisfactory evidence before the judge to indicate that there would be insurmountable obstacles to the couple continuing family life outside the UK. The Appellant's wife is a British citizen and wishes to remain in the UK. That does not satisfy the test of insurmountable obstacles.

39. Therefore, I conclude that if the judge had adopted the correct approach, the result of the appeal would have been the same, as there was no satisfactory evidence to indicate the insurmountable obstacles test was passed.

40. The judge did consider public interest and the considerations in section 117B. The judge also considered briefly but adequately, paragraph 276ADE(1)(vi) finding that the Appellant had failed to prove there would be very significant obstacles to his integration in Pakistan.

41. The judge took into account that the Appellant suffers from generalised anxiety disorder and made specific reference to a psychiatric report dated 21st August 2018.

42. The judge considered whether the application disclosed any exceptional circumstances and concluded that it did not. That is a finding open to the judge to make on the evidence.

43. In my view the judge was entitled to conclude that the Appellant would not be at risk if returned to Pakistan, and that his removal was proportionate in terms of Article 8, and although there was an error in not adopting the correct approach and specifically considering insurmountable obstacles, that error was not material as it would not have affected the result of the hearing.

Notice of Decision

The decision of the FTT does not disclose the making of a material error of law such that the decision must be set aside. I do not set aside the decision. The appeal is dismissed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge M A Hall 25th July 2019

TO THE RESPONDENT
FEE AWARD

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

Signed	Date
Deputy Upper Tribunal Judge M A Hall	25th July 2019