



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/11749/2019 (P)

THE IMMIGRATION ACTS

**Decision under Rule 34 Without a hearing
26th June 2020**

**Decision & Reasons Promulgated
On 09 July 2020**

Before

UPPER TRIBUNAL JUDGE COKER

Between

KHURRAM [S]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS (P)

1. FtT Judge Young-Harry dismissed Mr [S]'s appeal against the refusal of his human rights claim for reasons set out in a decision promulgated on 16th October 2019. Permission to appeal was granted by FtT judge E M Simpson on 18th February 2020. Directions for the further conduct of the appeal were sent and, in the circumstances surrounding COVID 19, provision was made for the question of whether there was an error of law and if so whether the decision of the FtT Judge should be set aside to be determined on the papers.
2. Both parties complied with the directions; neither party sought an oral hearing.
3. I am satisfied that the submissions made on behalf of the appellant and the respondent together with the papers before me are sufficient to enable me to be able to take a decision on whether there is an error of law in the decision of the

FtT and if so whether the decision should be set aside, on the papers and without hearing oral submissions.

4. The appellant was initially granted entry clearance as a business visitor and within a month married his sponsor. They have a six month old baby. The sponsor is not settled in the UK and the baby is not a 'qualifying' child. The appellant made a human rights claim to remain in the UK as the partner of a person present and settled in the UK. The FtT judge found that the sponsor was not settled – she had discretionary leave to remain until 2021; this is not the subject of appeal. The judge also found that there were no very significant obstacles to his integration on return to Pakistan; that the sponsor, although the registered carer of her mother had become a carer after her sister had another baby but that he had no doubt that arrangements could be made for alternate care. He noted that on the documentary evidence they did not live at the same address. The judge found that the sponsor could return to Pakistan with the appellant or could remain in the UK and they could maintain their relationship by 'modern means of communication'.

Error of law

5. The appellant takes issue with the lack of a Rule 24 response by the respondent, submitting that means the respondent has accepted there is an error of law. That is simply incorrect.
6. The grounds take issue with the claimed lack of reference to the best interests of the baby. It is correct that the judge does not make specific reference to the best interests of the baby but given the baby was 6 months old it is trite that the best interest of the child would be with both parents and if he were removed and the sponsor didn't leave, then to remain with the sponsor. This hardly needs saying. The failure to undertake a formulaic best interests assessment is not a material error of law.
7. The judge considered all the relevant factors, set out clearly and concisely those weighing in favour of the appellant and that it was open to the sponsor to go to Pakistan, the country of which she and the baby are also citizens. The appellant's submissions refer to the sponsor being her mother's carer but the evidence before the FtT judge did not provide detail of why the sponsor was required to remain or why alternative arrangements could not be made. Although the appellant may disagree with the finding made, the judge gave adequate reasons for his conclusion that it was open to the sponsor to stay or to go and that alternate arrangements could be made. As a person with discretionary leave to remain it is open to her to go or stay. The judge set out the material facts, adopted the balance sheet approach and reached findings that were plainly open to him.
8. The grounds relied upon refer to the FtT judge failing to take a decision 'in the real world'. It is unclear what is meant by this. The 'real world' is that the appellant met his sponsor 11 days after arriving in the UK, they were married within a month, he ran a successful business in Pakistan, she was a carer for her mother, they have a baby, there were no obstacles to the couple or him returning to his country of citizenship either with or without his sponsor and child

who are nationals of Pakistan and not settled in the UK. The judge considered the sponsor's circumstances and reached conclusions that were open to him on the evidence.

9. The grounds are a disagreement with the findings of the judge.
10. There is no error of law such that the decision is set aside.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision is to be set aside.

I do not set aside the decision.

Jane Coker

Upper Tribunal Judge Coker
Date 26 June 2020