Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08788/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House	**Decision & Reasons Promulgated**
On 22 March 2021	**On 28 April 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

RAFIQ AHMED
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The appellant did not appear and was not represented.
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I see no need for and do not make any order for anonymity in this case. I appreciate that the appellant is unwell but there is a strong presumption against anonymity and I have no reason to fear the publicity could cause him harm.

2. The case was listed for a remote hearing at 12 noon. At that time there had been no contact from the appellant or his representatives although the Tribunal records clearly show that notice of the hearing, including a warning that the Tribunal had powers to determine the appeal in the absence of a party, was sent to both the appellant and his known

representatives, in the case of the appellant by post and in the case of the representatives by email. It was therefore slightly surprising that there was no appearance. The most recent communication I can find on the file was a skeleton argument and other documents produced for a hearing on 19 February 2020. The skeleton argument was signed by Counsel. Although there had been no input for over a year the representatives do not appear to have applied to come off the record.

3. I heard submissions from Ms Everett and raised with her aspects of the appellant's case. This was completed at about twenty minutes past noon and nothing had been heard from the appellant. I decided I would determine the appeal in the absence of the appellant. I am satisfied that he had notice of the hearing served both on him at his home address and on his representatives and he offered no explanation for not attending.

4. This is an appeal against a decision of the First-tier Tribunal on 23 September 2020 dismissing the appellant's appeal against a decision of the respondent on 30 April 2019 and refusing him leave to remain on human rights grounds.

5. I begin by considering the First-tier Tribunal's decision and reasons.

6. The First-tier Tribunal started by reviewing the respondent's decision. The appellant had claimed the benefits of being in a genuine and subsisting relationship with a partner but the Secretary of State did not accept that the partnership had been established. The appellant shared an address with a woman but she had been recognised as a partner of another. The appellant had been in the United Kingdom for about fifteen years but not the twenty years necessary under the rules to establish a right to remain in the United Kingdom after living there without permission.

7. The respondent did not accept that there were "any unjustifiably harsh consequences" in the appellant being required to return to Pakistan.

8. The judge noted that the appeal had been originally listed for an oral hearing on 30 September 2019 but it was adjourned because the appellant's partner was too ill to attend. In February 2020 the appellant's solicitors said the appellant and his partner wanted a paper hearing because they were too ill to attend and give evidence and the papers found their way to the trial judge in September 2019. The judge summarised the documents that were before him but said at paragraph 14:

> "The basic issue still remains outstanding, in that neither the appellant nor the sponsor had attended to give evidence. If the respondent makes an allegation that the relationship is for convenience, and if there is sufficient evidence to justify that conclusion then the burden shifts to the appellant to demonstrate that it is a genuine relationship. In this case I am satisfied that there are strong grounds to suspect a relationship of convenience and the appellant not satisfied me on a balance of probabilities that there is a genuine relationship. It follows, therefore, that as this has been demonstrated to be a relationship of convenience, it follows that it is not a genuine relationship".

9. There is then a rather general reference to considering the relevant factors under Section 117B before the judge concluding that the appeal had to be dismissed.

10. Permission was granted by the First-tier Tribunal. However, when the judge granted permission he emphasised that:

> "Permission to appeal is only granted on the issue of private life. No grounds have been put forward concerning the findings made by the judge with regard to family life as the Applicant has not been able to demonstrate that he had a genuine and subsisting relationship with his Sponsor. That point is not taken in the application for permission to appeal".

11. I now look at the application for permission and summarise the grounds. The grounds refer to the appellant having established a private life in the United Kingdom on a lawful basis since he entered lawfully in August 2004 and his leave was extended until 2009. Criticism is made that the First-tier Tribunal Judge did not consider "factors such as the weight to be attached to the appellant's private life which was established when he had lawful residence in the United Kingdom". The grounds referred to the appellant being able to speak English and not having recourse to public funds and indeed criticises the judge for not apparently mentioning Section 117B at all. The grounds then go on to refer to failing to make any "adequate findings" on paragraph 276ADE(1) of HC 395. Particularly, the appellant had denied the respondent's contention that he had spent more than half his life in Pakistan. He had spent more than half of his life outside Pakistan. This contention was supported with reference to his Saudi Arabian passport having stamps showing entry to Saudi Arabia. The judge was also criticised for commenting adversely on the appellant not giving oral evidence and his suffering from a depressive illness. The grounds finish by saying:

> "It is submitted that the findings of the Immigration Judge in relation to the Appellant's private life are unsustainable and without any or inadequate reasons and therefore an error of law".

12. It is right to emphasise that the judge who gave permission, when he referred to the grounds relating solely to "private life", was not limiting the scope of his grant but pointing out that the scope of the permission application was limited.

13. It is therefore slightly surprising to see that the skeleton argument prepared by Counsel for the hearing that was to have taken place on 19 February 2020 begins by asserting that the appellant considered it to be a live issue if he is in a "genuine and subsisting relationship" with his alleged partner and whether there are "insurmountable obstacles to the couple continuing their relationship in Pakistan". The grounds also identify as an issue in the appeal if there would be "very significant obstacles to the appellant's integration to Pakistan" and whether removal would be a disproportionate interference with his and his family's protected rights under Article 8 and whether removal would be contrary to the best interests of the children in this case.

14. I cannot agree with Counsel that those things are in issue. To the extent that they were ever an issue they were resolved by the First-tier Tribunal. As was made abundantly plain there was no challenge to those findings in the application for permission and there was no permission given beyond the scope of the application. As indicated, the judge who gave permission drew attention to this. If a mistake had been made there may have been an opportunity to deal with it in a timely way but nothing was done. It follows that the submissions based on there being a genuine and subsisting relationship are irrelevant.

15. Similarly, submissions based on there being insurmountable obstacles are of limited relevance. There is no question of his resuming cohabitation with his alleged partner in Pakistan. She is not his partner.

16. However, ground 2 complains, with some justification, that the appellant had complained he could not live safely in Pakistan because of bad feeling arising from the failure of his first marriage and his suffering from depression and his not having returned to Pakistan since December 2007. These points were substantially repeated under ground 3 dealing with "very significant obstacles".

17. Ground 4, or submission 4, referred to Article 8 of the European Convention on Human Rights and ground 5 refers to his relationship with his partner's stepdaughter. Again, I cannot consider these points.

18. There are several documents before me which I have considered. Of particular interest is a prescription on 20 February 2020, and therefore post-decision, for Fluoxetine and Propranolol and there is evidence that Zopiclone has been prescribed. These are drugs commonly prescribed for anxiety and mild depression. I do not in any way seek to trivialise the illnesses that they assist but these are not drugs normally indicative of a very serious mental illness.

19. There is an updated witness statement dated 19 September 2019. This refers to the evidence of the Islamic marriage which was not accepted by the First-tier Tribunal and which finding has not been challenged.

20. It is explained that the alleged partner would not go to Pakistan because she had no experience of living there and did not wish to live there.

21. Further, the appellant claimed to feared vengeance from his former wife's family. He spoke critically of his ex-wife's brother describing him as an "habitual criminal, drug addict and member of a terrorist political group". There is also a statement from his sponsor but that adds nothing especially given the findings that have been made.

22. In an undated statement at G2 in the bundle the appellant makes similar complaints about the risks he faces.

23. Although I am entirely satisfied, having considered the papers as a whole, that the First-tier Tribunal reached a lawful conclusion I have to say the decision is not satisfactory because too little is explained and I set it aside.

24. I intend to re-make the decision on the evidence before me which I have considered.

25. It is for the appellant to show that the decision interferes with his (in this case) private life, proving facts on the balance of probabilities and for me to balance the consequence of that inference, if any, against the public interest.

26. The appellant has not established a life partnership or a parental relationship. That much is clear.

27. It is the respondent's case the appellant is a citizen of Pakistan. He was born in May 1969 and entered the United Kingdom in August 2004 with entry clearance and he extended his leave lawfully until it ran out in ran out in June 2010 when all applications had been refused and his appeal rights were exhausted. He remained in the United Kingdom making unsuccessful applications for further leave.

28. Although I am satisfied that the appellant does have a history of mental ill health and may well have poorly when the First-tier Tribunal's made its decision I am wholly unpersuaded that the ill health is any way near the kind of levels that make a person unreturnable.

29. I do not believe the appellant's claims to have a well-founded fear of his former brother-in-law or other members of his former wife's family. The appellant is not obliged to give evidence but I am not required to believe evidence at all and certainly not evidence that might be thought controversial and which has not been tested in cross-examination. I have seen nothing to show that the appellant is *unfit* to give evidence although I accept that one of the reasons given for seeking a "paper" hearing was that he did not want to give evidence because he is unwell.

30. The Reasons for Refusal Letter made it plain that it was not accepted that the appellant enjoyed a "genuine and subsisting relationship". He had not been in the United Kingdom for long enough to satisfy the requirements of the Rules unless he could show there were "very significant obstacles" to integration. The Secretary of State did not accept that the appellant had lost all social and cultural ties with his home country. The Secretary of State also looked for exceptional circumstances and acknowledged that:

> "Although you have indicated that you will face a serious harm if refused, you[r] failure to claim Asylum or International Protection has cast out on the veracity of your claim.
>
> [...]
>
> Further, you have not provided evidence that you would personally be affected if your application is refused and you have to return to your home country".

31. The letter then went on to explain that the appellant would be able to relocate within Pakistan in a place removed from his former relatives and, if necessary, the authorities in Pakistan could also be expected to assist.

32. It follows therefore it was plain that these points were in issue but there is little evidence to support the appellant's contested assertions.

33. I appreciate that in the solicitors' letter of 26 November 2018 there is a clear assertion of persistent problems with former relatives.

34. I find it hard to believe that a person would be at risk because of bad feeling in the family after so many years and I regard it as so unlikely that I do not accept the appellant's bare assertion as truthful.

35. In any event the issue of internal relocation and/or effective protection of the state are not addressed.

36. Further, even if I am wrong to reject the appellant's claim to have a well-founded fear that his former relatives are keen to harm him, I do not accept that he would be unable to find a place of safety in Pakistan especially as there is no reason for him to advertise his return. There is no credible reason for him to establish himself in part of Pakistan where his former relatives would know that he had returned.

37. It is not clear to me for how long the appellant has lived in Pakistan but I do acknowledge it is his case that he has spent a great deal of time in Saudi Arabia and I have seen photocopies of a passport issued to the appellant in Karachi. I regret that I cannot work out from that with confidence when the appellant might have been in Saudi Arabia. He certainly had permission sometime in 1993.

38. The appellant claims that he had not spent 35 years in Pakistan but rather he had been out of Pakistan for about 24 years. He left Pakistan at a very young age and started professional life in Saudi Arabia working there from 1993 to 2002. I have decided to accept that this is about right. There is sufficient clarity in the photocopy of the passport to give some credence to the date and this is a claim which is not difficult to believe.

39. It does not follow from this that the appellant could not re-establish himself in Pakistan and I find that he could.

40. The appellant has not made out any case under the Rules.

41. I remind myself of the terms of Section 117B of the 2002 Act. This gives statutory authority to the generally uncontroversial claim that effective immigration control is in the public interest. I accept the appellant can probably speak English to a good standard but that is not a reason for him to be allowed to remain, it is just that is case does not suffer the aggravating deficiency of his not being able to speak the main language used in his chosen country of residence. Similarly, he may well be able to earn a living if given the opportunity but that is not a weighty point in his favour.

42. Section 117B(5) requires me to give only "little weight" to private life established when a person's immigration status is precarious. This man's status has never been strong. For much of the time he had permission but his status was then precarious and for much of his residence in the United Kingdom he did not have permission to live there.

43. There is nothing under Section 117B that gives him any assistance.

44. The simple facts are that this is a man who entered the United Kingdom lawfully, extended his leave for considerable period but remained for a very long period after that leave had run out. He has no obvious right to be in the United Kingdom. He has no strong family life element in his

"private and family life" and although will no doubt be able to make his living and can speak English there is no strong reason in favour of allowing him to remain in the United Kingdom on Article 8 grounds.

45. He has not persuaded me that he really does face a risk of his former relatives and he has wholly failed to persuade me that any risk could be avoided by internal relocation. He has not adduced evidence of the kind of ill health necessary to be given a right to remain.

46. Although I found the First-tier Tribunal erred in law I find the decision is right, I have re-evaluated the evidence myself and formed my own view and for the reasons given although I find the First-tier Tribunal erred in law and I set aside its decision I dismiss this appeal.

Notice of Decision

I set aside the decision of the First-tier Tribunal and I remake the decision and, like the First-tier Tribunal, I dismiss this appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 20 April 2012