Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/22888/2018

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons**
Remotely via Skype for Business	**Promulgated**
On 12 February 2021	**On 1 March 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

MOHSIN ASHRAF
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Karim
For the Respondent: Mrs Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a male citizen of Pakistan who was born on 28 May 1992. He appealed a decision of the Secretary of State dated 31 October 2018 refusing his application to remain on human rights grounds to the First-tier Tribunal which, in a decision promulgated on 3 December 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant had entered the United Kingdom as a student in 2011. A subsequent asylum application had been withdrawn. The appellant married the sponsor, a United Kingdom citizen of Afghan origin who had previously been a party to a forced marriage, in the United Kingdom under Sharia law in March 2017. Their marriage was registered in April 2018.

3. There are four grounds of appeal. First, the appellant argues that the judge erred in law by giving insufficient weight to the possibility that the appellant and sponsor would be regarded as adulterers on return to Pakistan. At [12] the judge found that 'whilst the appellant's marriage to the sponsor may not be recognised in Pakistan' he found that there was insufficient evidence that the sponsor's former husband or her own family would be aware of their presence. The appellant submits that the judge also gave inadequate weight to the observations of the appellant's expert, Dr Wali, on this issue. In her Rule 24 statement, the Secretary of State points out that the appellant and sponsor 'are in fact married' and that there would be 'no inference [in Pakistan] that they are not married.'

4. In my opinion, the judge did not err in law. The sponsor and appellant have married in the United Kingdom including under Sharia Law. They would have no reason whatever to disclose their pre-marriage history to any third party whilst there would arise no suspicion generally as regards that history in any community in Pakistan in which they might live. The finding that the couple would not encounter the sponsor's former husband or her own family was patently available to the judge on the evidence. Neither the extract quoted in the ground from the CPIN or the evidence of the expert compels a conclusion that the judge's finding was in any way perverse. The ground is nothing more that a disagreement with the Tribunal's findings.

5. Ground 2 argues that the judge failed to address the circumstances of the sponsor is reaching his conclusion that there exist no insurmountable obstacles to the couple's return to Pakistan. At [7a-g] of the grounds those circumstances are set out and, in addition to those referred to at [2] above, include the fact that the sponsor suffers depression, does not 'speak the language', is undergoing IVF treatment, has a job in the United Kingdom and has been the subject of a Protective Order as a consequence of her forced marriage. The grounds state that the 'the unduly harsh test would have been met' had the judge applied these factors.

6. That latter statement indicates that the appellant considers that the factual matrix is such that only one outcome of the appeal is possible and that the judge's analysis is, therefore, perverse. I reject that argument. I

am satisfied that the judge has considered all the relevant evidence whilst there is nothing to indicate that he took account of irrelevant matters. It was open to the judge to find [12(vi)] that the sponsor had spent time in Pakistan in the past and that there was no reason to think that her Afghan ethnicity, which had not caused difficulties then, would be a problem now. The judge correctly gave weight to the fact that the appellant's family have fully supported the couple and would continue to do so. That support, as the judge found, would be an important factor in enabling the couple to ingrate in Pakistan. The judge's findings regarding the appellant's mental health are detailed and sustainable. Significantly, the appellant had lived in Pakistan until his adulthood and was found by the judge to be 'resourceful.'

7. Ground 3 is without merit. The appellant asserts that the judge appears to have considered only whether the appellant would return alone at [12(xi)] and comments that family life could be maintained by 'social media and visits'. The ground choses to overlook the remainder of the judge's analysis which addresses in detail the consequences of the couple retuning together to Pakistan. Given that I find that there is no legal error in that part of the decision, which is determinative of the appeal on Article 8 ECHR grounds, this challenge fails.

8. Ground 4 is also without merit. It raises the judge's treatment of the judgment in *Chikwamba [2008]* UKHL 40. First, the relevance of the judgment is not clear here; the appellant is not being required to return to Pakistan for the sole reason that a policy of the Secretary of State requires that he do so, as in *Chikwamba*. Secondly, the judge considered all the relevant factors before concluding that there exist no exceptional circumstances in this case which outweigh the public interest in the appellant making an application to out of country. That finding is not, in my opinion, wrong in law. The grounds implicitly acknowledge that the approach of the judge was legitimate and certainly not perverse when they speak of the circumstances being *'arguably* exceptional' and that the application for entry clearance may be successful as 'the appellant *is likely to find employment* [and the] financial requirements *could be met, even if not already met*.' [my emphasis]. Plainly, the judge reached a finding which was open to him on the evidence.

9. For the reasons I have given, I am satisfied that the First-tier Tribunal did not err in law and I find that its decision should stand. The appellant is dismissed accordingly.

Notice of Decision

The appeal is dismissed.

Signed Date 14 February 2021

Upper Tribunal Judge Lane