



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-006220
UI-2022-006221
FtT No: HU/53534/2022
HU/53535/2022**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 29 May 2023**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

JUNAID HAIDER & SHOBANA PAWAR
(no anonymity order)

Appellants

and

SSHD

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by RH & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 17 May 2023

DECISION AND REASONS

1. The appellants are husband and wife, citizens of Pakistan and India respectively. He is Muslim. She is a former Hindu who has converted to Islam. They claimed that they would at risk from their respective families, and from others, in both Pakistan and India. The SSHD rejected their claim. They appealed to the FtT.
2. Judge Clapham dismissed their appeal in 2016 because they were not credible witnesses; no risk was shown from their families; and even if there was, both sufficiency of protection and internal relocation were available in each country.
3. The appellants did not leave the UK, but made further submissions, based on two reports by a country expert, Dr Livia Holden. They also provided evidence that they married on 16 June 2016. The SSHD accepted that they are in a genuine relationship but refused their claim. They appealed again to the FtT.

They did not ask for an oral hearing. Judge Prudham considered their appeal “on the papers” and dismissed it by a decision dated 13 December 2022.

4. The appellants sought permission to appeal to the UT on these grounds: ...

The FTT erred in law for the following reasons:

- (i) the informed reader is left in real and substantial doubt as to why the FTT holds at paragraph 20 that the expert reports are not new evidence and that little weight is attached to them. The previous FTT ... did not have the advantage of the information contained in the expert reports and indeed did not have any expert reports before it. Although the previous FTT had regard to delays in obtaining visas, the expert also opined on the difficulties in renewing those visas, as well as various other restrictions and difficulties the couple would face in each of their respective countries. Those aspects had not been previously considered and were not dependent on the appellants’ credibility thus vitiating the FTT’s reasons at paragraphs 18-19. The information contained in the expert reports was not before the previous FTT. The appellants are substantially prejudiced where their appeals have been refused;
- (ii) the first expert report ... states *inter alia*: that Indian citizenship for foreigners marrying Indian citizens can only be applied after 7 years of ordinary residence in India (paragraph 21); several restrictions apply in both India and Pakistan (paragraph 21); various difficulties concerning visa regulations and bureaucracy in both countries (paragraphs 21-28); there is an insufficiency of protection (paragraphs 38-41);
- (iii) ... the expert’s second report ... states *inter alia*: that it is unlikely the first appellant will obtain a visa for India where it is unlikely he will be able to submit his passport with a Pakistani visa or resident permit (paragraph 24); various other issues that would arise in India: they can leave India only once a year; all internal short trips must be reported; they can only live in 3 pre-approved cities; if the second appellant needed to move to another city, the first appellant may not be able to follow them; the first appellant would not be entitled to work, own property or open a bank account (paragraph 26); narrates issues with the application and renewal of visas for Pakistani nationals in India (paragraphs 27-31 of the second expert report); that the appellants are at risk of discrimination in India (paragraph 54); there are several factors which make it difficult for Pakistani spouses of Indian nationals to apply for Indian citizenship (paragraph 59); there are issues in the first appellant obtaining employment in India (paragraphs 66-76); the second appellant would have to relinquish her Indian citizenship if she wished to obtain Pakistani citizenship (paragraph 78) and which she was not prepared to do ...; the second appellant would not be able to work in Pakistan and that would have an impact (paragraph 79); various issues in obtaining employment in Pakistan (paragraphs 82-89);
- (iv) the foregoing factors are not dependent on the appellants’ credibility and vitiate the FTT’s concerns at paragraph 18 of its decision. The foregoing factors are relevant to the proportionality assessment under Article 8, ECHR. The foregoing information was not before the previous FTT and thus vitiates the FTT’s findings at paragraphs 19- 21.

5. FtT Judge Mills granted permission on 9 January 2023: ...

2. The appellants ... claim to be unable to live together in either of their countries of origin for a number of reasons, including the risk of harm from their respective families who disapprove of their marriage, and practical obstacles arising from societal discrimination, in particular in relation to the obtaining of visas.

3. The same issues had already been brought before the Tribunal in an appeal in February 2016, which was dismissed by Judge Clapham who found that the appellants were not credible as to the claimed fear of their families, and also that the visa issues could be overcome. In this fresh claim, the appellants relied upon expert evidence from Dr Livia

Holden, who was of the view that the various issues that would be faced by the couple in either India or Pakistan were very significant. Judge Prudham, however, declined to place any weight on the expert evidence, primarily on the basis that Dr Holden had not been provided with a copy of Judge Clapham's decision, and so had not taken his adverse credibility findings into account.

4. The grounds ... focus on the Judge's consideration of the expert report, and contend that Judge Prudham has erred in failing to place any weight upon the same. In particular, it is said that the expert's view of matters such as the significant obstacles to the appellants obtaining permission to reside in their spouse's country, are unrelated to the credibility of their claim to fear harm from their parents, and so it was not open to the Judge to reject this evidence on that basis.

5. I find that the challenge does disclose arguable errors of law ...

6. Judge Prudham approached the case on the basis of the expert not having been provided with the SSHD's refusal decisions or the prior tribunal determination and not being made aware of any concerns over credibility, observing at [19 - 20]:

Dr Holden has also failed to address specifically the findings made by Immigration Judge Clapham regarding sufficiency of protection, internal relocation or the obtaining of visas. For example, Judge Clapham found that there would be delays in obtaining visas but that was not the same as being unable to obtain a visa.

These are significant deficiencies in the reports of Dr Holden. I find that her reports are not new evidence but an opinion based largely upon facts that have already been dismissed by the previous determination. I attach little weight therefore to the reports of Dr Holden.

7. Mr Winter was in some difficulty in showing that the FtT had been asked to decide this case on the alternative of the appellants not being credible, beyond being from different countries and of different religious backgrounds. On looking up the skeleton argument which was before the FtT, he founded upon its references to whether there were "insurmountable obstacles in establishing family life in India or Pakistan" (although he did not accept that would be the test in a further decision).
8. Mr Mullen contended that the reports did not disclose any difficulties facing the appellants which had not been considered before; no novel case had been clearly put; the decision was adequate to cover the alternative of no credibility; and that even if there had been an omission, it had not been shown to be material.
9. Mr Winter, in reply, founded upon the absence of reasoning for any finding distinct from the credibility issue, and submitted that the case in the alternative was not so obviously weak that it was bound to fail, and so the omission was material.
10. I reserved my decision.
11. I note that the skeleton argument to the FtT is based on the appellants' previous narrative, supported by irrelevant reference to authority on credibility. It asserts,

for example, at [8] that their “account is coherent and credible and does not run counter to the evidence”. The line that the appellants have a case irrespective of credibility is difficult to discern prior to the grounds of appeal to the UT.

12. I also note that any lack of clarity in the reports is attributable not to the expert but to the nature of the instructions given.
13. With some reluctance, however, I am just persuaded that the terms of the reports and the presentation of the fresh submissions did require an analysis not only of whether the adverse credibility findings were superseded but whether there was a case, irrespective of those findings. It is easy to see why the tribunal approached the case as it did, but there was an oversight which requires to be remedied.
14. Parties agreed that on that view, the case should revert for further decision at initial level on the issue disclosed in the grounds, and that there was no reason for the decision not to be completed by the original Judge.
15. The decision of the FtT is set aside, to the effect explained above. The remaining issue is whether difficulties for the appellants in establishing their family life in Pakistan or India, due to their respective origins, and irrespective of credibility, disclose that they have a right to remain in the UK on human rights grounds.
16. Mr Winter suggested that (contrary to the terms of the skeleton argument to the FtT) that might be established by a general proportionality consideration, a lesser test than in section EX, appendix FM of the immigration rules (within which the appellants do not fall). It will be for the appellants to show that any lesser a test applies, and for the FtT to decide whether the facts of the case, demonstrated by the expert evidence, fall within whichever test is relevant.
17. The case is remitted for further decision in the FtT. It should be listed before Judge Prudham, if practical, but otherwise may be decided further by any other Judge.
18. No anonymity order has been requested or made.

Hugh Macleman
Judge of the Upper Tribunal, Immigration and Asylum Chamber
24 May 2023