IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000340

First-tier Tribunal No:
HU/51196/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 June 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

HASSAN MAHMOOD
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Winter instructed by R H & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Melville Street, Edinburgh on 15 May 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Cowx, promulgated on 3 November 2021.

2. Permission to appeal against that decision was refused by the First-tier Tribunal and again by the Upper Tribunal on a renewed application. That decision was, however, reduced by the Court of Session on 9 February 2023 for the reasons set out in the joint minute. Subsequent to that, permission was granted by the Upper Tribunal on 16 February 2023.

The Appellant's Case

3. The appellant is a citizen of Pakistan who entered the United Kingdom on 20 November 2014 with entry clearance as a spouse valid until 31 January 2017. He was granted further leave to remain in that capacity from 20 July 2018 to 26 July 2020 but an application for an extension of that leave was refused. The Secretary of State's case is that the appellant was not entitled to further leave, that it was not accepted that he met the financial and English language requirements and paragraph EX.1(b) did not apply. The Secretary of State considered also that paragraph 276ADE (1) did not apply as there were not very significant obstacles to his integration into Pakistan.

4. The appellant also states that he has significant mental health problems.

5. The judge concluded that the appellant did not meet the substance of Rule 276ADE(1)(vi) nor did he fall within the Exception EX.1(b). He found that there were no significant obstacles to the appellant's integration into Pakistan, a country where he was born and raised, and where he had lived until almost the age of 27. He observed also that the appellant had established family network in Pakistan in the form of his father, four brothers and other relatives [20] and he was not persuaded that the appellant would be unable to work on return [21]. Equally he was not satisfied that the appellant's history of mental illness presents a very significant obstacle to his integration [22] though accepting that the appellant had a history of mental health problems since at least 2017 [23].

6. The judge found that the appellant and his wife would not face very significant difficulties continuing their family life together in Pakistan [25] any difficulties being short-term and of a kind attendant on relocation which could be overcome. The judge directed himself [26].

7. The judge noted that the appellant's wife was from Pakistan although she had come here as a child. She had not learnt to speak English; her first language is Punjabi and she is conversant in Urdu [27]. He found that Pakistan was a country and culture which he remains familiar and has visited and that the major obstacle she currently faces in the UK, that is language, would not be an obstacle in Pakistan. He did not accept that any learning difficulties that exist were significant as they had not been an obstacle to the appellant and his partner maintaining family life in the United Kingdom [28], no supporting evidence was produced in support of claiming to have learning difficulties. He observed [29] that the appellant's wife has her husband's large family to rely upon and whilst she might have difficulty finding employment she would be no worse off than she is now in the United Kingdom. He stated "she would lose UK state benefits but her husband will, I find, have far better prospects of finding paid employment in Pakistan where language is no barrier and he has a family support network. I reject Mr Khan's submission that the couple would face destitution in Pakistan". Having considered health problems and rejecting the submission that the appellant's wife was vulnerable and could not live without him, the judge went on to consider Article 8 outside the Immigration Rules finding [35] that Article 8 was engaged and that the

interference by removing the appellant was proportionate [36] on the basis that he had found it was possible for the appellant and his wife to continue their family life together in their country of origin with culture and languages still very familiar to them whether there was a family network in place finding nothing exceptional in those circumstances.

8. The appellant sought permission to appeal on the revised grounds that the judge had erred in his assessment of Article 8 outside the Rules in that:-

(i) He had failed to take account or had failed to exercise anxious scrutiny in failing to consider that the appellant's wife would lose her indefinite leave to remain were she to go to Pakistan to live with the appellant, a material fact which ought to have been assessed in the proportionality assessment nor had any thought been given, contrary to GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630;

(ii) He had failed properly apply GM (Sri Lanka) focussing on the wife's ability or capability to move to Pakistan not the reasonableness;

(iii) He wrongly considered the finding that there were no unsurmountable obstacles as being determinative of proportionality, contrary to Lal v SSHD [2020] I WLR 858.

The Hearing

9. I heard submissions from both representatives. I also had before me a bundle prepared by the parties and a second inventory of productions and a bundle of authorities.

10. There is no challenge to the judge's findings of fact with respect to paragraphs 276ADE(1) or EX.1. The focus of the submissions was that there had been a failure to take into account that the appellant's wife has indefinite leave to remain. Mr Winter accepted that there was no express reference to that point in the skeleton argument put before the First-tier Tribunal. Mr Mullen submitted that GM (Sri Lanka) could be distinguished in this case, there being no children here and that the findings were fact specific. He submitted further that it was clearly in the judge's mind that the appellant's wife would lose benefits though the appellant's wife would in fact be able to return to the United Kingdom as long as she did not stay away for more than two years, then in the event would have the option to apply for entry clearance to return to the United Kingdom.

11. The facts in GM (Sri Lanka) are significantly different from those here. In that case, the appellant and her husband had two children and as at the date of appeal before the First-tier. In GM, the appellant's leave had expired and it was only after the decisions of the First-tier Tribunal and the Upper Tribunal that the Secretary of State granted her husband and their children indefinite leave to remain. Thus, as the court made clear at [7].

12. It is in that context that for an entirely different scenario which ILR had been granted they had said, as observed at [34] that a person's immigration status can affect the weight of that person's Article rights, but what was concerned the part that was in issue in GM was [51 to 52] the rights that the husband and children would lose, that is legacy discretionary leave to remain with a pathway to settled status for him and the children.

13. It was noted above that the situation here is entirely different. There are no children involved and the appellant's wife has at all material times had indefinite leave to remain. Equally, the appellant was on a pathway to settled status and did have leave at the date of decision. Indeed, that is still the case given that he has the protection of Section 3C of the Immigration Act 1971.

14. Having considered this skeleton argument and the witness statements of the appellant and his wife put before the First-tier Tribunal I am unable to discern any indicator that this factor was put before the judge. I asked Mr Winter if he was able to do so and he could not take me to any passages indicating that this point was raised. He did, however, seek to rely on the decision in Robinson. As was noted in Durueke (PTA: AZ applied, proper approach) [2019] UKUT 197 at [34] in an asylum or human rights case the Tribunal must take a Robinson obvious point in the claimant's favour but that "a Robinson obvious point is one that has a strong prospect of success".

15. It is in principle difficult to see how a judge can be faulted for not issuing weight to a point not raised before him in submissions or in the skeleton argument or referred to in the witness statements.

16. It must be borne in mind in this case that there is no challenge to the finding that there are not insurmountable obstacles in terms of the Immigration Rules and that, it being conceded that the appellant cannot succeed under the Immigration Rules there must be serious compelling circumstances such that removal would be disproportionate. Further, it does not necessarily follow that if the appellant's wife left the United Kingdom she would automatically lose her indefinite leave to remain.

17. It is perhaps easily forgotten that the appellant's wife's ILR would not automatically cease on her departing the United Kingdom. Nor would it necessarily do so unless she chose to live permanently outside the United Kingdom. Further, this scenario is inevitably the case where the spouse of a settled person is refused further leave. And where the submission is that the settled spouse can leave to be with their partner. It is in any event difficult to see how that would of necessity be a significant factor at one end of the spectrum where the settled person has for example children it may be significant here, where the settled partner has been found to have extensive connections with the country to which it is proposed she should live that it less so.

18. Accordingly, I am not satisfied that the judge erred in not taking into account this factor, it not being one put to him and not one which is necessarily Robinson obvious. It does not necessarily follow that it would have made a significant difference thus does not meet the Robinson test.

19. Beyond that, the grounds are simply an attempt to reargue the case. In the event it is simply not correct to say that no analysis had been given to the fact the appellant's wife had been absent from Pakistan for the majority of her life. That is clearly referred to as is the fact that the appellant had entered on a valid visa and had been here lawfully.

20. Accordingly, for these reasons I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date: 1 June 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal
Immigration and Asylum Chamber