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

Case No: UI-2024-000987

First-tier Tribunal No: HU/50268/2023
LH/04703/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 25 June 2024**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**
**DEPUTY UPPER TRIBUNAL JUDGE FARRELLY**

**Between**

**Saima Bibi**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**
For the Appellant: Mr Alam, Counsel.
For the Respondent: Mr Banham, Senior Home Office Presenting Officer

**Heard at Field House on 20 May 2024**

**DECISION AND REASONS**

**Introduction**

1. The appellant is a Pakistani national ,born in June 1991. She came to the United Kingdom in October 2016 with limited leave as the wife of a British citizen,Mr Adil Hussain. We will refer to him hereinafter as her sponsor . She subsequently applied for indefinite leave to remain ; this was refused in November 2022 because the financial threshold of £18,600 in the immigration rules was not met.

**Decision of the First -tier Tribunal**

2. Her appeal was heard by FtT Tribunal Judge Hena on 24 October 2023 and dismissed. It was accepted on behalf of the appellant that the financial eligibility requirements could not be met. The extant issue was EX 1 of appendix FM. and whether there were insurmountable obstacles to family life with her partner

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continuing outside the United Kingdom .It was submitted it would be disproportionate under article 8 to remove her to Pakistan.

3. The respondent argued that her sponsor could relocate to Pakistan. His father had dementia. The judge did not accept that only the sponsor, as his eldest male child, could care for him . He could be cared for by his wife, the sponsor's mother, as well as the sponsor's siblings. The family could avail of support from the local authority. The sponsor was unemployed so leaving would not impact on employment or pension rights. In Pakistan he could be assisted by the appellant and her family. He was last in Pakistan 2015 and would be familiar with the country. The couple have no significant health problems and, in any event, can access treatment in Pakistan. There was no evidence of likely destitution and there was a family network to provide initial support.

4. The judge considered rule 276 ADE(vi) and the appellant's private life. The test of significant obstacles to her integration back into Pakistan was like insurmountable obstacles under EX 1. The evidence indicated a family network for the appellant and her husband, and she has siblings there and she is related to her in-laws. The judge did not accept if she returned alone, she would be alienated. There would be family protection and gossip about the relationship would not reach the very significant obstacles threshold .

5. In terms of article 8 and exceptional circumstances, the judge pointed out the immigration rules were not met, and this was a significant factor when considering the proportionality test and the public interest in immigration control. Reference was made to section 117 B. The judge concluded her sponsor could relocate with her or alternatively, a future application could be made when the financial requirements were met.

## Grounds of appeal

6. Permission to appeal to the Upper Tribunal was granted by DUT Judge Lewis. It was arguable the assessment should have considered their joint earnings. It was also arguable there was no evaluation of the nature and quality of family life and private life, particularly that of the sponsor, in the United Kingdom. The judge noted there had been no challenge to the findings in respect of EX1 or in relation to paragraph 276 ADE(1).

## Submissions

7. Mr Alam submitted that in carrying out the article 8 assessment the judge did not adequately considered factors going in favour of the appellant. For instance, she had been in the United Kingdom lawfully for seven years and had integrated .The rule 24 response had noted the sponsor had been working and this ended because of the pandemic. The appellant was not permitted to continue in her employment because her employers misunderstood her documentation .He submitted these factors were outside the control of the appellant and sponsor and resulted in an injustice to them. He referred to the evidence that the sponsor's income from self-employment for the tax year April 2020 to April 2021 amounted to £14,600. He suggested the judge had applied an overly rigid approach contrary to the guidance at paragraph 99 of MM(Lebanon) [2017] UKSC 10.The differential was £4200.The grounds referred to the appellants own income of £5362.08 from August 2021 2 February 2022.Whilst the ground accepts the rules did not allow for combining the incomes this was relevant to the article 8 consideration.

8. It was accepted the rules were not met. Mr Alam accepted that the appellant's employment and that of her sponsor could not be correlated as they involved different tax years.

9. Mr Banham relied upon the rule 24 response. He pointed out the failure to meet the financial requirements in the immigration rules was a material consideration to the article 8 assessment. The judge had adequately considered her father-in-law's health. He said the grounds had not sought to argue any historical injustice. The judge had noted the sponsor's unemployment .

10. Both representatives agreed that if we found a material error of law the matter could be remade in the Upper Tribunal. We reserved our decision.

## Analysis

11. There is no suggestion the financial requirements are met. MM (Lebanon and others) found that the minimum income requirement was lawful. There are no children affected by the present decision .

12. It is clear there is no error in relation to the argument now made about combined incomes. The determination does not indicate that this was argued. Rather, it was accepted the financial requirement under the rules could not be met on this basis. Had the joint incomes been considered they related to different tax years in any event. The calculations and relevant periods are set out in the respondent's review, and these have not been challenged.

13. The judge had considered the family life. There is no doubt that family life existed between the appellant and her sponsor. That family life also extended to wider family of the sponsor, particularly in relation to his father. The judge considered this and found that the care was shared. The judge set out reasons in relation to this at paragraph 19 when considering insurmountable obstacles. The judge did not see any mitigating factors. The judge correctly pointed out that failure to meet the immigration rules was a significant factor in the proportionality assessment under article 8. The judge also alluded to the public interest considerations and section 117B.The judge also had regard to the position of the sponsor and was satisfied he can integrate into life in Pakistan given the support from the extended family there. The judge had considered the proportionality of the decision and the public interest considerations.

14. Having considered the arguments advanced we do not find a material error of law demonstrated. It is important to recall that the immigration rules are a statement of the respondent's policy and are intended to be article 8 compliant. Whilst they are not a complete code they are significant in the evaluation of the proportionality . We find the judge made adequate findings in relation to this. There is no principle that the closer a person has come to complying with the rules the less proportionate is the interference. Consequently, FT Judge Hena's decision dismissing the appeal shall stand.

## Notice of Decision

15. The decision of the First-tier tribunal did not involve the making of an error of law and stands.

**Deputy Upper Tribunal Judge Farrelly**

Francis J Farrelly
Judge of the Upper Tribunal
Immigration and Asylum Chamber.