IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001317

First-tier Tribunal No: HU/50296/2023
[LH/04480/2023]

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 4th of June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

RIZWAN NAWAZ
(No anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr West of Counsel
For the Respondent: Mr Wain a Senior Home Office Presenting Officer

Heard at Field House on 20 May 2024

DECISION AND REASONS

1. The Appellant was born on 21 February 1982. He is a citizen of Pakistan. He appealed against the decision of the Respondent dated 9 January 2023, refusing his human rights claim made on 22 February 2022.

2. The Appellant appeals against the decision of FTT Judge Sweet, promulgated on 2 March 2024, dismissing the appeal.

Permission to appeal

3. Permission was granted by FTT Judge Roots on 28 March 2024 who stated:

"2. The grounds assert that the Judge erred in conflating legal tests; adopting an erroneous approach to the assessment of Article 8 issues; and failing to provide adequate reasons.
3. The grounds of appeal are arguable. I note that a detailed skeleton argument was filed running to 72 paragraphs. Whilst this could have been more concise, the skeleton contained detailed arguments which the Judge arguably failed to adequately deal with, as the grounds assert. The findings appear to be at paragraphs 8 - 12 of the decision, with brief conclusions at paragraphs 13 - 14 (which contained the very brief Article 8 assessment) and as per the grounds of appeal the findings and reasons are arguably inadequate.
4. Permission to appeal is granted on all grounds."

The First-tier Tribunal decision of 2 March 2024

4. Judge Sweet made the following findings:

"8. ...The appellant is a citizen of Pakistan, who first arrived in the UK in 2011 under a student visa, which was subsequently extended to September 2015...They have been together for 10 years, were married in a religious ceremony in the UK on 14 September 2014, and in a civil ceremony on 5 January 2015...They would be returning together as a couple rather than separately.
9....the support which the appellant clearly gives his spouse in respect of her mental health condition would be maintained by returning to Pakistan together, where they have both lived previously, having met in Rawalpindi in August 2010. They did not explain satisfactorily why they could not live in a different area in Pakistan if there were difficulties faced from their respective families – and in her evidence she said she has no family in Pakistan in any event...
10. The appellant's spouse has been employed as an IT administrator since February 2022, around the time of the application, and she earns £22,000 per year gross. She stated in her witness statement that, due to her ill health, she may have to reduce her hours, but she has not done so 20 months after starting, and therefore she would be able to support any application which the appellant made from Pakistan for entry clearance, the financial threshold being likely to be met.
11.The appellant's spouse, if she was left in the UK while the appellant returned to Pakistan to make his application, could be supported by her two older sisters, who live in Bradford, the appellant and spouse living in Barking, East London. She said that her sisters lived independent lives, but did not provide any witness evidence from them.
12.A further submission was made that the appellant and his spouse would find it difficult to find employment in Pakistan, because the employment opportunities are limited to those aged 25 to 40, but they both confirmed that they had not made efforts to enquire about employment opportunities. The appellant had been in the police in Pakistan, and has taken on odd jobs in the UK, including gardening,

cleaning, removals and working at Pizza Express. In respect of the appellant spouse's mental ill health, for which she takes medication, the CPIN Pakistan on medical and healthcare provisions (September 2020) confirms that mental health facilities are available in Pakistan.
13.There are no insurmountable obstacles, or very significant obstacles, on return to Pakistan. Nor are there any exceptional circumstances, because if the appellant was to return to Pakistan to make his entry clearance application from there, his spouse could obtain further healthcare from the NHS and from her two UK siblings.
14.Finally, I take into account that the maintenance of effective immigration controls is in the public interest and little weight should be given to any private life under Section 117B(1), (4) and (5) of the Nationality, Immigration and Asylum Act 2002, established when the appellant's immigration status has been unlawful or precarious."

The Appellant's grounds seeking permission to appeal

5. Given the prolixity in the grounds, in order to understand them, I will summarise them thus in that the Judge:

(i) erred in the conflation of two different tests under the Immigration Rules namely the insurmountable obstacles test under [EX1] of Appendix FM which pre-supposes they will reside together, and the very significant obstacles test under [276ADE] which presupposes he will return alone;
(ii) erred in the approach to section 117B(4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") (as amended) and the Chikwamba v SSHD [2008] UKHL 40 principle as,
(a) section 117B(1) is not a "little weight" provision;
(b) section 117B(4) applies also to family life as opposed to simply private life as the Judge suggests; and
(c) arguably section 117B(4)(b) did not bite in the Appellant's appeal as the relationship was not formed when he was here unlawfully;
(d) alternatively the Judge directed that he should give little weight to the Appellant's private life whereas there is inherent flexibility within the little weight provision - see Rhuppiah v SSHD [2018] UKSC 58 at [49], and
(iii) failed to provide adequate reasons on the stigmatisation of the Appellant's wife's mental health, and the lack of reference to her suspected breast cancer.

Oral submissions

6. Mr Wain confirmed that there was no Rule 24 notice. The grounds were opposed.

7. Mr West submitted that the findings are very brief.

8. In relation to ground (i), he submitted that it is difficult to separate out which findings relate to the insurmountable obstacle test and which to the very significant obstacles test. The findings cannot be imported into other paragraphs. The only finding regarding the very significant obstacles test is in [11]. On a fair reading of the decision there is no mention of integration. It is hard to challenge [8] to [12] as it cannot be said which paragraph relates to which test.

9. In relation to ground (ii) he submitted that there is no balance sheet approach regarding the family life which goes in the Appellant's favour. The relationship was formed when they couple married.

10. In relation to ground (iii) he submitted that it is hard to know what the Judge was considering regarding the private life issue. It is hard to counter as the explanation is inadequate. The findings are confused. The Judge has not considered a number of factors or mentioned the suspected cancer.

11. Mr Wain submitted that the decision was short but adequate.

12. In relation to ground (i) he submitted that the Judge conducted a global assessment. The Judge has not conflated but combined the factual matrix to both tests. There is no material error of law in not referring to the authorities.

13. In relation to ground (ii) he submitted that the Judge applied this as a general proportionality point. It was not used against the Appellant. The Judge accepted the relationship was formed during a period of leave. The Appellant's status was precarious throughout and unlawful for part of the time. Chikwamba does not assist the Appellant given Younas (section 117B(6)(b); Chikwamba; Zambrano) [2020] UKUT 129 (IAC) at [90]. The Judge was entitled to find that there would be no unjustifiably harsh consequences by a short separation while the Appellant made an application for entry clearance.

14. In relation to ground (iii) he submitted that not all the facts are specifically addressed but the finding on medical issues was adequate as the Judge said that NHS treatment can continue.

15. Mr West replied that at best it is unclear where the Appellant's private life was considered which must be separate to the family life consideration. The Appellant cannot understand why his private life claim failed. He has been here for a long time. His British wife is here. The Judge has not factored in all the matters that could have bene found in the Appellant's favour. Section 117B(4)(b) of the 2002 Act does not fall against the Appellant.

Discussion

16. There is no material error of law for these reasons.

17. In relation to ground (1) the Judge was entitled to find that the factual matrix as found met both the insurmountable obstacle test and the very significant obstacles test. The Judge did not have to delineate the tests and repeat the paragraphs. It is clear from a reading of the findings that the Judge was satisfied that if the Appellant's spouse remained here while he returned to Pakistan she could get relevant support and support his application for entry clearance, and if she went with she could get support from medical services in Pakistan and he could work and that in neither circumstances was the relevant test met. Whilst the Judge did not use the word integration, the Judge was plainly satisfied that given the Appellant's employment history and the availability of healthcare provision [12], and as they had both lived in Pakistan previously (see [9]) they would be able to reintegrate when referring to the no very significant obstacles or insurmountable obstacles to either of them returning to Pakistan.

18. In relation to ground (ii) it is correct of Mr West to note that section 117B(1) of the 2002 Act is not a little weight provision as it states that *"The maintenance of effective immigration controls is in the public interest."* He is also correct to note that section 117(b(4) applies to both family and private life.

19. However the Judge did not accept that the relationship was formed during a period of leave contrary to the submission of Mr West and Mr Wain. The Judge identified at [8] when the Islamic marriage took place but did not say that that is when the relationship formed. As summarised in [22] of the grounds drafted by Mr West and the skeleton argument at [4] that was before the Judge, the couple started living together in October 2013, had an Islamic marriage on 14 September 2014, and had a register office marriage on 5 January 2025, and that the Appellant had lawful leave from 26 November 2013 to 6 September 2015. It is simply unarguable to suggest that a relationship does not form or establish when a couple begin living together and that it only forms or establishes when they marry. The Judge did not have to state that blindingly obvious point. Section 117B(4)(b) of the 2002 Act therefore plainly bites as they began living together while he did not have lawful leave.

20. As pointed out by Mr Wain in Younis at [90];

> *"…an appellant in an Article 8 human rights appeal who argues that there is no public interest in removal because after leaving the UK he or she will be granted entry clearance must, in all cases, address the relevant considerations in Part 5A of the 2002 Act including section 117B(1), which stipulates that "the maintenance of effective immigration controls is in the public interest". Reliance on Chikwamba does not obviate the need to do this."*

21. I do of course note Alam v SSHD [2023] EWCA Civ 30 at [106] which states that;

*"…ii. … Section 117B(4)(b) now requires courts and tribunals to have '**regard in particular**' to the '**consideration**' that '**little weight**' should be given to a relationship which is formed with a qualifying partner when the applicant is in the United Kingdom unlawfully.*
*iii. When Chikwamba was decided there was no provision in the Rules which dealt with article 8 claims within, or outside, the Rules. By contrast, by the time of the decisions which are the subject of these appeals, Appendix FM dealt with such claims. Paragraph EX.1 of Appendix FM provided an exception to the requirements of Appendix FM in article 8 cases if the applicant had a relationship with a qualifying partner and there were '**insurmountable obstacles**' to family life abroad."*

22. I also note Rhuppiah at [49] that;

"the provisions of section 117B cannot put decision-makers in a strait-jacket which constrains them to determine claims under article 8 inconsistently with the article itself. Inbuilt into the concept of "little weight" itself is a small degree of flexibility"

23. The Judge gave little weight to that private life as required by Section 117B(5) of the 2002 Act (see[14]). The Judge did not have to identify the precise amount of weight having identified the key factors already in the decision that informed his judgment.

24. In relation to ground (iii), the Judge does not have to identify every detail of the case or make findings on every point. It is clear that the Judge was aware of the need for medical treatment. The lack of a diagnosis of cancer meant that it had not been established by the Appellant that medical care was required in Pakistan. The Judge was not therefore required to assess evidence on the basis of a hypothetical and did not have to particularise the evidence in any greater detail than was done.

Notice of Decision

25. The Judge did not make a material error of law.

Laurence Saffer

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 May 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.