



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/02599/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29th September 2014**

**Determination
Promulgated
On 30th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Mr Abdallah Bakhsh
(NO Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Chohan, instructed by Greenfields Solicitors
For the Respondent: Mr Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 19th June 1976. He appealed against the decision, dated 16th December 2013, of the respondent to refuse to vary his leave remove him from the UK by way of directions.

2. First Tier Tribunal Judge Mallins dismissed the appeal with regard to the Immigration Rules and on human rights grounds.
3. An application for permission to appeal was granted by First Tier Tribunal Judge P J G White in the following terms

'the Gulshan Nagre approach to Article 8 adopted by the judge at paragraph 13.2 in finding that there are no good arguable grounds to consider Article 8 outside the Rules is arguably wrong in the light of MM [2014] EWCA Civ 985'

*The judge's findings concerning the Appellant's connections with Saudi Arabia (paragraph 11 (j)) and the judge's suggestion that the appellant should be removed to Saudi Arabia rather than Pakistan (paragraph 13.3) is contradictory to the judge's findings that the appellant retains ties to Pakistan (paragraph 11(k) given the Presidential guidance in **Ogundimu (article 8 - new rules) Nigeria [2013] UKUT 00060**'.*

4. In particular the ground of appeal noted that the judge failed to correctly record the dates pertaining to the appellant's immigration history and referred to the appellant arriving in 1999 rather than 1998, made a reference in the determination to South Africa when the appellant has never had an association with South Africa, and then refers to an entry in 1978. These indicate that the judge did not appreciate the full factual matrix and conceivably applied the wrong facts.
5. In addition the judge refers at 11(k) to the fact that the appellant had a Pakistani passport and ID card recently obtained and that 'his father has connections in Pakistan (despite his having been in Saudi Arabia for over 50 years) but the judge continues that '*clearly there are undisclosed facts relating to the appellant's and his family's ties to Pakistan. In the circumstances I am unable to find as a fact that the appellant has shown on the balance of probabilities that he has no ties to Pakistan*'. The judge appears to have come to a conclusion on the basis, even in part, of 'undisclosed facts' which suggests speculation. Notwithstanding that, the judge makes contradictory finding at 13.3 that '*the better course of action would be for removal directions to be set to Saudi Arabia where the appellant would despite his long absence in my judgment feel at home with his large family, no doubt childhood and student memories and connections where his native Arabic tongue is spoken*'.
6. I find that there were factual errors in the determination and contradictory findings with respect to his links with Pakistan. As the judge states she accepts much of what the appellant stated as true and she recorded in the evidence that he had never been to Pakistan, could not speak Urdu and spoke as his first language, Arabic. He had obtained the Pakistan passport through his father's connections. As **Ogundimu** asserts, ties imports a concept involving something more than merely remote or abstract links to the country of proposed removal and that there should be a rounded assessment of his links with Pakistan to inform any decision as

to whether there were either arguably good grounds to consider the matter outside **Gulshan**, and a consideration of proportionality

7. I find an error of law and the determination is set aside. The matter is to be re-listed in the First Tier Tribunal for a hearing de novo.

Signed
2014

Date 29th September

Deputy Upper Tribunal Judge Rimington