Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/12885/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th November 2017	**On 8th November 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

LATIF AHMAD

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Price, instructed by Morgan Mark solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Pakistan, sought and was refused leave to remain on human rights grounds. The respondent, in her decision dated 30th November 2015 considered his application under Appendix FM, paragraph 276ADE, Article 3 and Article 8. The appellant had sought leave to remain on the basis of his relationship with his partner, Ms Yasmeen, whom he married under Islamic law on 4 September 2013 and with whom he had cohabited since then. The covering letter to the application form stated that:

> "In reality, it is submitted, the denial of leave to Mr Ahmed will not result in Ms Yasmeen having to leave the UK to be with him, but rather in him having to leave the UK in order to seek entry clearance as a spouse".

The letter had also earlier stated:

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> "…..you are respectfully requested to consider granting leave to remain outside the Immigration Rules on an exceptional basis.
> It is submitted that outside the Immigration Rules the *insurmountable obstacles* criteria is an incorrect legal test.
> It is submitted that the proper test is to assess whether it is *reasonable* to expect Ms Yasmeen to relocate to Pakistan".

2. The grounds of appeal to the First-tier Tribunal were simply that the decision of the respondent was not in accordance with the law and that further grounds would follow. In fact, further grounds were not filed but in a skeleton argument it was submitted to the First-tier Tribunal judge that the only issue to be decided by the First-tier Tribunal judge was whether it was reasonable to expect the parties to go to Pakistan and establish family life there ([3] skeleton). It was submitted that the evidence was that the appellant's wife could not relocate to Pakistan because of her family ties in the UK, her employment, medical treatment, her established life in the UK, that she is settled in the UK and it would be unreasonable, unrealistic and disproportionate to expect the partner to move and settle in a strange country to keep her marriage intact; that she had previously had a broken relationship and had now found a stable relationship; he would be destitute in Pakistan. The First-tier Tribunal judge set out the submissions in detail including the submission on behalf of the appellant that if he is required to leave the UK, then his wife, to be with him, will essentially be exiled. In reaching his conclusions, the judge refers, *inter alia*, to *Nagre* [2013] EWHC 720 (Admin) and *Agyarko* [2015] EWCA Civ 440. The judge did not accept the submission that the appellant would, on his return to Pakistan be destitute. He found there was nothing in the evidence that would indicate that the appellant could not find work on return to Pakistan. The judge considered the couple's desire for infertility treatment, his wife's visits to her father's grave, her employment and the medical evidence. He accepted there would be significant difficulties in relocating to Pakistan for both the appellant and his wife ([64]) but he was not satisfied there were insurmountable obstacles and he did not accept that there would be very significant difficulties in them continuing their family life together or that there will be very serious hardship ([64]). The judge was not satisfied there were very significant obstacles to the appellant's reintegration into Pakistan ([67]). He was not satisfied that there was a dependency between the appellant's wife and her family members which would engage Article 8 but accepts that she doesn't want to leave her family members and that her mother would be distressed ([72]). In [75] the judge finds the appellant's immigration status is precarious (he has been an illegal entrant since his arrival 14 years ago) but accepts that little weight does not mean no weight and the judge gave weight to all the facts that he set out. The judge concludes:

> "79. For the reasons already outlined above I do not accept that it would be unjustifiably harsh or unreasonable to expect the appellant to relocate to Pakistan where he spent his formative years and given my above findings I do not find that it would be unreasonable to expect the appellant's wife to return to Pakistan, should that be her wish, to maintain family life.
> 80. I am not satisfied that the appellant has shown that there are compelling circumstances which would warrant a grant of leave outside of the rules.

> 81. I am satisfied that the respondent's decision is itself a lawful one and that when the factors in favour of the appellant are balanced against the respondent's legitimate aim that the balance falls in favour of the respondent and that the decision to remove the appellant is proportionate to their legitimate aim of the maintenance of an effective immigration policy."

3. Permission to appeal was sought and granted, in essence, on the grounds that since the decision of the First-tier Tribunal, *Agyarko* [2017] UKSC 11 had been handed down and this made clear that "although the Supreme Court approved the test of insurmountable obstacles in precarious family life cases", it was arguable the judge had failed to recognise that a case could succeed even where there were no insurmountable obstacles. The grounds relied upon also submitted that the judge had misdirected himself in taking account only of the wife's income (which did not meet the income threshold) and that account should have been taken of potential income because support was available from the wife's mother and he had a job offer and thus there might be no public interest in his removal (*MM (Lebanon)* [2017] UKSC 10).

4. Ms Price, before me, submitted that the judge in [67] had accepted there would be 'significant difficulties' in relocating to Pakistan and that falls within the rubric of 'very strong', 'compelling'. She queried whether, in referring to the public interest in immigration control, what was actually being said was the constructive removal of a law abiding, employed British Citizen was reasonable; that it was not for British Immigration law to dictate who a person should fall in love with. This satisfied, she submitted, the requirement of exceptional circumstances. To amount to fair and firm immigration control, Ms Price submitted that the SSHD should take responsibility for her own omissions in enforcing immigration control: the appellant had been an illegal entrant for 14 years, had been detained and released on bail and not removed; the SSHD had waited, she submitted, until he had established a relationship with a British Citizen woman and the judge should have taken these matters into account. She submitted that the person being punished was the British Citizen who fell in love with a person with a precarious immigration history.

5. "Significant difficulties" falls notably short of "very significant obstacles". To submit otherwise is to contort the natural meaning of the language. The First-tier Tribunal judge's decision that the appellant did not fall within the Rules and, in particular, paragraph 276ADE(1)(vi) was a decision that was plainly and clearly open to him on the evidence before him. There is no error of law by the judge that the appellant does not meet the requirements of the Immigration Rules.

6. Consideration of an appeal under the wider rubric of Article 8 can, of course, in some circumstances lead to leave to remain being granted even though the requirements of the immigration rules are not met. The fact of the wife's citizenship and the removal of the appellant does not and cannot amount to constructive removal of a British Citizen. The extent and nature of the relationship the couple have is a private life matter. The prospect of possible future separation has been at large since they chose to embark upon that relationship. That the respondent has not removed the appellant

despite his illegal residence in the UK is, considered at its very and most generous, a benefit to him that has enabled a relationship to develop. It does not in this case result in less weight or a minimising of the public interest in his removal. That the appellant has a job offer or there is financial support available in the future are matters that can be taken into account in any future application for entry clearance. The submission that the question in terms of a wider application of Article 8 is whether the decision is "reasonable" is incorrect. Article 8 is not, it is well established, a 'make-weight' where a person falls outwith the immigration rules. It was plainly open to the First-tier Tribunal judge, as was clearly expressed by him, to conclude on the basis of all the evidence before him, that the respondent's decision to refuse leave to remain on human rights grounds was not disproportionate.

7. There is no material error of law in the decision of the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Date 7th November 2017

Upper Tribunal Judge Coker