Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13440/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 18 January 2018	**On 22 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR SALMAN ASLAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Turner of Counsel
For the Respondent: Mr Tarlow, a Home Office presenting officer

DECISION AND REASONS

Introduction and background

1. This is an appeal by Mr Aslam (the appellant) who is a citizen of Pakistan born on 23 January 1985.

2. The respondent refused further leave to remain under the Immigration Rules and on human rights grounds on the basis that there were insurmountable obstacles to him continuing his longstanding relationship with Narender Kaur Dhaliwal if he were returned to Pakistan. The refusal under the Immigration Rules was on the basis that the appellant did not meet the requirements of Appendix FM of the Immigration Rules and secondly that he did not meet the financial requirements of those Rules; both the eligibility requirements and the financial requirements of Appendix FM. The respondent also considered the application under the European Convention on Human Rights (ECHR) but concluded that there were no exceptional reasons why the application for further leave to remain should be allowed outside the Immigration Rules.

3. The appellant appealed the respondent's refusal to Judge of the First-tier Tribunal Clarke (Judge Clarke) who on 28 April 2017 dismissed the appeal. The appellant subsequently appealed to the Upper Tribunal. (FTT/UT) Judge Pooler decided that there were several aspects of the decision which, arguably, were unsatisfactory. He also said it was arguably wrong for the judge to fail to make findings as to whether the appellant satisfied the £18,600 threshold set by appendix FM. Secondly, it was just arguable that the appellant had been entitled to a further consideration of his claim under the evidential flexibility policy and thirdly it was arguable that the Immigration Judge had failed to consider certain evidence in relation to interfaith marriages. Finally, it was arguable that the immigration judge had misdirected himself in relation to the precarious nature of the appellant's immigration status.

The Hearing

4. The appellant was represented before me by Mr Turner of Counsel who submitted that two evidential gaps in the application to the respondent had been filled. The appellant's partner's pay slips were included at page 48 of the appellant's bundle produced for the First-tier Tribunal hearing. That pay slip for April 2015, had not, however, been included with the original application. The second missing document was a missing bank statement for September 2015. That document was also produced in the above-mentioned bundle at the hearing (at page 60 in the bundle of documents). Mr Turner submitted that the correct level of maintenance in this case was £18,600. It was plain from the documents just mentioned that the appellant met the requirements of the relevant appendix to the Rules at that time. He went on to submit that the Islamic law in relation to the country from which the appellant came Pakistan was so strict that it would not tolerate an interfaith marriage such as the one on which he had embarked with Miss Dhaliwal. It was his submission that the Immigration Judge was wrong to say there was no credible evidence of the family's difficulties in reintegrating into Pakistan. The Immigration Judge had failed to have regard to the general interfaith position in Pakistan. If the Immigration Judge had properly looked at the documents which were produced as well as considered the objective material, he would have reached a different decision. That decision was plainly wrong. Indeed, Mr Turner went so far as to describe it as "perverse" to find that the appellant can continue his family life in Pakistan with Miss Dhaliwal. He

also said that paragraph 276ADE (6) of the Immigration Rules, which provided that where an applicant was aged 18 and above and had lived in the UK for less than 20 years, there had to be "very significant obstacles" preventing the applicant's return to the country to which he would go if required to leave the UK. However, he appeared to say that in his submission that test was satisfied. Assuming Paragraph 276ADE (6) applied, the question was whether the appellant and his wife could relocate to Pakistan. The answer was "no". In his submission there were insurmountable obstacles to their doing so. The Immigration Judge had not properly dealt with this issue, indeed, had perversely dealt with this issue in her decision.

5. For the reasons just summarised, I was asked to find a material error of law. It was accepted by Mr Turner that if I were to find the material error of law it would be necessary to remit the matter either to the Secretary of State for further consideration or back to the First-tier Tribunal for a fresh hearing.

Discussion

6. Having had an opportunity to thoroughly consider the Immigration Judge's decision, I find it to have been adequately reasoned. As Judge Clarke pointed out, in paragraphs 33 et seq of her decision, all evidence in support of the application should have been submitted with that application (see E – LTR P.3.1). It is regrettable that the present Rules are something of an obstacle course to be overcome, and I sympathise with an applicant trying to negotiate those obstacles. However, I find as a fact that he did not submit the relevant documents with his application. Specifically, the appellant failed to supply at least one payslip (see page 5 of the refusal dated 4 December 2015) and he had not provided a letter from his employer who issued the payslip confirming his employment and gross salary which complied in full with the requirements of the Immigration Rules. I understand it to be conceded that these documents had not been supplied to the respondent at that time. It is now contended that the payslip was not produced to the respondent in support of the application. However, it is claimed that this payslip was produced before the First-tier Tribunal. I understand it to be accepted that there was no letter from his employer, as was clearly required by the Rules, with the appellant's application either. This was conceded by his representative at the First-tier Tribunal. Plainly, I find, the appellant had not met the requirements of the Immigration Rules.

7. It was submitted that the appellant was under an obligation to apply the "evidential flexibility policy". By that policy, first introduced under the points-based scheme, provided that the appellant is guilty of only an innocent oversight it is incumbent upon the respondent to point out minor positions which can easily be rectified. Guidance in this respect is now to be found in decision-makers own guidance notes available online from the Home Office website (see Appendix FM 1.7: Financial Requirement August 2017). The policy describes a discretion on the part of decision-makers to defer consideration of the application pending submission of missing evidence. I do not believe there was any obligation respondent in these circumstances, where it is not obvious the missing documents would-be supplied

within a reasonable time or at all. The Upper Tribunal when it considered the application for permission to appeal in this case described this ground as being "just arguable". It is contended in the grounds of appeal that the respondent failed to follow her own policy, but the grounds do not specify in what way or ways. Having considered that submission I have concluded that I not been shown a letter from the appellant's employer that would satisfy the requirements of the Rules. There has been no application under Rule 15A of the Regulations 2008 to submit fresh evidence before the Upper Tribunal. It was unclear precisely which other letters and other documents were relied on, but these should have been the subject of a formal application. Both those would have post-dated the decision in the sense that they were not submitted in support of the application. By virtue of the provisions of section 85 (4) of the 2002 Act these documents could have been considered by an appellant court but for the reasons given I think it right not to do so at this late stage. In the circumstances, they would not be documents that I should attach weight to.

8. Secondly, the Immigration Judge dealt fully dealt fully with whether there were insurmountable obstacles to the appellant continuing his family life with the sponsor in Pakistan. It was incumbent upon the appellant to show that there were very significant obstacles to his reintegration into Pakistan. The Immigration Judge noted that the appellant had been in the UK for less than nine years. He first entered the UK with valid leave as long ago as 2008. The relationship with Miss Dhaliwal was a longstanding one in that they had been married since 2012. There was no dispute by the Secretary of State that the marriage is an interfaith one or that their relationship was a genuine and subsisting one. I find the decision not to have been a perverse one. Judge Clarke did her best to deal with what was, obviously, a difficult issue. The evidence at great length and in some considerable detail. All the relevant authorities were referred to together with the objective material consisting of the Country Information and Guidance on Pakistan: Interfaith Marriage version 1.0 January 2016.

9. Judge Clarke also considered the refusal in the context of Article 8 on the basis that the case could not succeed under the Immigration Rules. I note that as this appeal post-dated the commencement into force of the Immigration Act 2014 that is in fact the only basis upon which the appellant could appeal First-tier Tribunal (see section 82 of the Nationality, Immigration and Asylum Act 2002). The question for Judge Clarke was therefore whether it was necessary in order to respect the appellant's right to family life between himself and the sponsor, or to facilitate their future family life together to, exceptionally, allow the case outside the Immigration Rules under the ECHR. Judge Clarke fully considered this issue against the background of recent authority including the leading cases and Parliament's intervention in sections 117A – 117D of 2002 Act. As Judge Clarke pointed out the Immigration Rules included a proportionality exercise. She decided the case in favour of the public interest in applying legitimate and established immigration rules fairly and equally to the facts of the case. In my judgment that decision was plainly open to the on the evidence presented. The real issue was whether the appellant and the sponsor could continue the family life they had formed together in the UK in Pakistan. In my judgment Judge Clarke rightly concluded that they could.

Conclusions

10. Having concluded that I do not think the decision to be perverse, I have also concluded that although another immigration judge might have reached a different conclusion than Judge Clarke, there was no material error of law in the way she dealt with the issue of the appellant's protected human rights. I agree with Mr Tarlow that the present appeal amounts to a disagreement with the conclusions reached by the Immigration Judge. Her conclusions on the appellant's protected human rights were clearly justified and the Upper Tribunal will not interfere with that decision.

Decision

11. The appeal to the Upper Tribunal against the decision of the First-tier Tribunal to dismiss the appellant's appeal against the application to the respondent to refuse leave to remain is dismissed.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have decided to make no fee award.

Signed Date 16 February 2018

Deputy Upper Tribunal Judge Hanbury