



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

Appeal Number: HU/06487/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 3 January 2020**

**Decision & Reasons Promulgated
On 20 January 2020**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ISHTIAQ [K]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Chaggar, instructed by Bushra Ali solicitors

For the Respondent: Mr Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born on 31 October 1976 and is a male citizen of Pakistan. He appealed to the First-tier Tribunal against a decision of the Secretary of State dated 24 March 2019 to refuse his application for leave to remain in the United Kingdom. The First-tier Tribunal, in a decision promulgated on 15 July 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Appellant first came to United Kingdom in January 2010 as a student. His further leave to remain as a student was curtailed to expire on 12 July 2013. Thereafter, the appellant made a number of applications for leave to

remain which did not succeed. The instant appeal follows an application on human rights grounds for leave to remain on the basis of family life with the appellant's wife, [JK] and her son, [MK].

3. The judge identified two issues in the appeal. First, he considered whether the appellant's marriage is genuine and subsisting. Secondly, he considered whether family life could be pursued abroad in Pakistan. The judge found that the marriage is genuine and subsisting, a finding which is not challenged by the Secretary of State. As regards Article 8 ECHR, the judge noted that the appellant's wife's father suffers from dementia. He observed that the appellant's wife is not her father's 'direct carer and he will remain in the care home where he is living' should the appellant or the family move to live in Pakistan [13]. The appellant's stepson, [MK], suffers from mental health difficulties. The judge noted that [MK] is now over the age of 18 years and, whilst he accepted that the appellant may have been a 'stabilising influence that enabled [his wife] and [MK] to make progress... [MK] is no longer a minor and different considerations apply and these will continue to develop' [15]. The judge found that the removal of the appellant to Pakistan would cause his wife and her son difficulties and would be 'distressing for all concerned.' However, he noted that the family were in situation 'of their own making' the relationship between the appellant and his wife having been established at a time when the appellant's removal was a 'distinct possibility.' The judge concluded that the circumstances which 'would prevail in the appellant's absence' would not be unduly harsh. He acknowledged that the appellant's wife is reluctant to live in Pakistan but he found that there were no insurmountable obstacles to family life continuing in that country.
4. The grounds of appeal assert that the judge failed to have proper regard to the mental health of the appellant stepson, [MK]. The judge had improperly considered [MK] as if he were 'any other normal 18-year-old 'not an individual who had suffered 'a traumatic childhood.' Further, the grounds challenge the judge's findings at [13] regarding the appellant's father-in-law. This was a submission developed by Mrs Chaggar, who appeared for the appellant, at the initial hearing in the Upper Tribunal. She submitted that the judge had failed to engage with the fact that it is necessary for the appellant's wife to act under a power of attorney for the father-in-law. The appellant's wife had moral and legal obligations towards her father which could not be easily discharged from abroad. In particular, there would be problems with the time difference between Pakistan and the United Kingdom.
5. I find that the judge has provided as a brief but adequate analysis of the evidence. It is true that at [15] the judge does not make specific reference to [MK]'s mental health problems but I am satisfied that the judge was well aware of those difficulties when making his analysis; he has made clear that he considered all the evidence in reaching his decision [7]. Moreover, there is nothing in the evidence concerning [MK] which would compel the conclusion that he could not be separated from the appellant or, indeed, his mother if she were to accompany the appellant to Pakistan. I note from

the appellant's witness statement [43] that he refers to [MK] having 'his friends studies and future career in the United Kingdom.' The judge's assessment of [MK] as a young adult who would naturally be moving away from reliance upon his mother and stepfather is not inconsistent with the appellant's own evidence.

6. I also find that the judge's brief analysis of the appellant's father-in-law's position is adequate. Neither the appellant was wife are the day-to-day carers of this gentleman whose life in the care home will continue undisturbed whether the appellant returns to Pakistan alone or if he departs with his wife. Counsel's submissions that the appellant's wife could not execute her duties under a power of attorney are not persuasive. I do not see why the time difference between Pakistan and the United Kingdom should interfere with the performance of those obligations and, whilst modern means of communication by the internet and telephone may not be appropriate, for example, to maintain a relationship between a parent and a minor child, I see no reason why such means should not enable the appellant's wife to fulfil obligations under the power of attorney from abroad.
7. The judge has acknowledged that the family will suffer disruption if either the appellant returns to Pakistan alone to make an out of country application to return or if he returns there with his wife, either to live together whilst an application is made or to settle permanently in that country. The judge did not err in law by concluding that the appellant and his wife might reasonably continue their family life together in Pakistan and that there were no exceptional circumstances in this appeal. Consequently, the appeal to the Upper Tribunal is dismissed.

Notice of Decision

This appeal is dismissed.

Signed

Date 15 January 2020

Upper Tribunal Judge Lane