IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-000269
First-tier Tribunal No:
HU/00441/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 18 January 2024

Before

THE HON. MR JUSTICE DOVE, PRESIDENT
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
MR C M G OCKELTON, VICE PRESIDENT

Between

Rashid Kamran

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Spurling
For the Respondent: Mr Melvin, Home Office Presenting Officer

Heard at Field House on 3 April 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 20 March 1985. He applied on 23 March 2020 for entry clearance into the UK under the Appendix FM of the Immigration Rules. The basis of his application was his family life with his partner and sponsor, Mrs McGee. The relationship had started when the appellant had been an overstayer in the UK. He then returned to Pakistan and in 2020 Ms McGee flew out to Pakistan where they were married in Islamabad on 22 January 2020.

2. The application for entry clearance, which had been made on 23 March 2020, was refused on 19 November 2020 leading to the appeal by the appellant. The matter was the subject of a Case Management Review before a judge of the First-tier on 7 December 2021. During the course of that Case Management Review a number of matters were discussed and resolved. One of those was that there

would be no opportunity for the appellant to give evidence remotely from Pakistan. It was also resolved that there would be no medical evidence submitted in support of the appeal. Furthermore, the parties confirmed that the paperwork, which was currently before the First-tier Tribunal, was that which was appropriate and necessary for the resolution of the case. Therefore, it was agreed that the matter should proceed to a resolution on the papers rather than there being the need for an oral hearing.

3. The judge of the First-tier published a determination dealing with the disposing of the appeal on 21 December 2021. In that determination the appeal was refused. In particular, at paragraph 4 of the determination, the judge noted that the parties were satisfied that the matter could be dealt with by way of a paper hearing. He also noted that both parties had had the opportunity, and accepted that they had had the opportunity, to provide full submissions and that the issues could be decided without the need for an oral hearing.

4. The judge went on to set out the appellant's case in the following terms at paragraph 6 of the determination:

> "6. The appellant currently resides in Pakistan. He had previously arrived in the UK on 27/9/2010 on a student visa valid from 25/9/2010 until 24/2/2012. The appellant overstayed his visa and was removed from the UK in September 2019. On 22/1/2020 he married the sponsor at a ceremony in Islamabad. The sponsor receives Personal Independence Payment benefits and does not pay council tax. The sponsor resides in a property in Kilmarnock. The appellant now wishes to enter the UK to reside with his wife."

5. The judge then noted the respondent's case set out in the refusal letter, based upon paragraph 320(11) of the Immigration Rules. It was the respondent's case that there were no exceptional circumstances which would render a refusal of entry clearance in breach of Article 8 of the ECHR. The judge then went on to consider the reasons for the decision on the appeal. At paragraph 10 the judge adopted the breach of paragraph 320(11) of the Immigration Rules and accepted that aspect of the respondent's case. The judge then went on in paragraph 11 to deal with the eligibility financial requirements. It was noted in that paragraph that the sponsor and Mrs McGee had an entitlement to a personal independence payment at a particular standard rate. That, it was concluded by the judge, evidenced the sponsor's entitlement to receipt of the personal independence payment as required by the Immigration Rules. The judge went on to note that housing was provided to the sponsor, as well as the council tax bill submitted in support of the appellant's case. Thus, it was accepted that the appellant met the eligibility financial requirements of the Immigration Rules.

6. The judge then went on to assess the Article 8 claim which was advanced directing himself as to the appropriate legal requirements. The judge noted the breach of the Immigration Rules which had occurred in this case and which has already been recorded above. The overarching conclusion that the judge reached was set out in paragraph 16 of the determination in the following terms:

> "16. Weighing against the appellant is his immigration history and his failure to meet the Immigration Rules. These were matters that were within the knowledge of the appellant and sponsor when they married in Islamabad. Weighing in the appellant's favour is the extent to which

> his family life with the sponsor would be ruptured and whether there are insurmountable obstacles in the way of the family living in his home country. Neither the appellant nor the sponsor provided any evidence of the insurmountable obstacles there would be for the sponsor to live with the appellant in Pakistan. The sponsor is said to have a child, however no mention of the child is made in her statement. The appellant's application refers to the sponsor having a dependent called Stephen McGhee. However the application unhelpfully states the dependent's date of birth is 1/1/1901. From the application I note that the appellant lives in a home that has been in his family for generations. He lives there with his mother. I also note that the sponsor was able to travel to Islamabad for the wedding ceremony. From these facts I find that whilst the sponsor may have some difficulties in residing in Pakistan the obstacles faced would not be insurmountable."

7. In the light of these conclusions the judge dismissed the human rights appeal, which was presented. In support of the appeal, on behalf of the appellant, Mr Spurling submits that there was a failure in the judge's human rights assessment. Before coming to the particular points which Mr Spurling raises, it is in our view notable that there are features of this case not relied upon by Mr Spurling but which provide very important context to the submissions which he seeks to make. The first part of that context is the Case Management Review and the introduction of procedural rigour in the First-tier Tribunal, which a Case Management Review injects into the conduct of the appeal proceedings. Mr Spurling makes no complaint about the decisions which were taken at the Case Management Review and rightly so. However, what would have become clear as a result of those important preparatory directions is that this was a case in which there was to be no further paperwork and perhaps, as part of the context for evaluating Mr Spurling's later submissions, no further material to be adduced in relation to the sponsor's medical situation.

8. The second piece of context is this. Mr Spurling rightly, in our judgment, made clear that he made no complaint about the failure of the First-tier Judge to undertake any further enquires or investigations in the light of the papers that were presented to the judge. It is right to observe that it may of course be possible for the First-tier Judge to raise their own enquiries as to aspects of an appeal which may not be fully or adequately rehearsed on the papers. However, it was open and perfectly proper for the First-tier Judge in this case to note in paragraph 4 that all of the material, which was to be advanced in the context of the appeal had been presented and that there was, in accordance with what was decided at the Case Management Review hearing, an acceptance that it would be perfectly fair for the appeal to be determined without recourse to an oral hearing.

9. That brings us to Mr Spurling's complaint. Mr Spurling's complaint on behalf of the appellant is that the judge appears to have, in his submission, resolved the Article 8 questions relying heavily upon the breach of the Immigration Rules and moreover failed to take into account in seeking to strike the Article 8 balance, the factual justification for the award of the personal independence payment and the bearing which that might have had upon the circumstances facing the sponsor were she to have to move with the appellant to Pakistan. It is submitted that the justification for the award of the personal independence payment was a matter which was obvious, or should have been obvious, to the First-tier Judge and should have been taken into account.

10. Notwithstanding the care with which Mr Spurling's submission in that connection was advanced, we are wholly unpersuaded that it is meritorious. Firstly, the conclusions which the judge reached in paragraph 16 of the determination were ones which were reached foursquare within the material which was presented to him. Secondly, it is always obviously for the parties to advance their case and for judges to resolve the case placed before them. In this case, the judge did precisely that. The judge was entitled to rely upon the fact that there would be no further medical evidence and no further evidence addressing any specific difficulties with respect to insurmountable obstacles arising in respect of the sponsor's move to Pakistan. It is clear that the judge was alive in the final sentence of paragraph 16 to that consideration but the resolution of that issue was one which the judge reached bearing in mind all of the evidence which had been placed before the First-tier Tribunal in the context of the appeal.

11. For all of those reasons we are not satisfied that there is any error of law in the First-tier Judge's determination, which dealt succinctly and in a focused fashion with the matters which had been placed before the First-tier Tribunal in the context of the appeal, and therefore this appeal must be dismissed.

Ian Dove

Judge of the Upper Tribunal
Immigration and Asylum Chamber
Decision delivered ex tempore: 3rd April 2023

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

I have dismissed the appeal and therefore there can be no fee award.