



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04343/2016

THE IMMIGRATION ACTS

Heard at Manchester
On 9th February 2018

Decision & Reasons Promulgated
On 5th March 2018

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

MUHAMMAD HASNAT MAHMOOD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In person
For the Respondent: Mr C Bates, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 2nd March 1984. He entered the United Kingdom with a Tier 4 Student Visa on 26th March 2010, expiring on 30th October 2013. He applied for and was refused an EEA residence card. He then made application for extension of his student visa, but that was refused on 26th March 2014. A judicial review application was refused on 29th January 2015, but having been given the opportunity to serve a One-Stop Notice, the appellant made an application for leave to remain on the basis of his human rights on 13 October 2015. His application was refused by the respondent on 10th February 2016, and the appellant appealed to the First-tier Tribunal. His appeal was heard by First-tier Tribunal Judge Frankish at Stoke-on-Trent on 20th June 2017.
2. The appellant heard oral evidence from the appellant and his wife. When his leave expired in October 2013, the appellant was cohabiting with a British citizen student,

Lynn Gabriel Ewing (“the spouse”) and he did not return with her to Pakistan, because he did not believe it to be safe for her to live there. They were married on 23rd February 2013. His wife is a citizen of Turks and Caicos and is a pharmacy student at Liverpool John Moores University, hoping to graduate in August of this year and currently undertaking a prequalifying year’s work. The judge considered paragraph 276ADE and concluded that there would be no insurmountable obstacles to the appellant returning and integrating into the culture of his own country, but the real basis of his case was that his wife would not wish to be left behind. He considered EX.1 and EX.2. The appellant claimed that his wife would not be tolerated in Pakistan which would in effect amount to insurmountable obstacles. Christians will not be tolerated in Pakistan and although he, as a Muslim, is entitled to marry a Christian, their offspring have to be brought up within the faith. This was something the sponsor had acceded to. The appellant also claimed that his family would not accept his spouse, but the judge said that as a grown man if committed to his marriage he should not be discouraged by the disapproval of certain members of his extended family.

3. The judge found that it was impossible to conclude in the terms of the Rules that there were insurmountable obstacles to the appellant returning to Pakistan. The judge accepted that there were obstacles, in that there would be a marital separation, but found that they could be overcome by the appellant making a marriage settlement application once he could return to Pakistan. Accommodation is already in place and his spouse is currently supporting him as he is not permitted to work. She is currently earning just under £18,000 per annum and with part-time work could meet the £18,600 threshold. The judge found that there were not any insurmountable obstacles. The judge went on to consider Section 117 and noted that the appellant’s relationship was established at a time when the appellant had limited leave to remain.
4. Leave was granted by First-tier Tribunal Judge Chamberlain, suggesting that it was arguable that the judge had not fully considered the return of both of them, since the judge refers to significant obstacles if the appellant were to return alone and make a settlement application.
5. At the hearing before me, I explained to the appellant my purpose and also that unless I was satisfied there was a material error of law in the judge’s determination, I was not permitted to interfere with it. The appellant told me that he had had no relationships in Pakistan, by which I believe he meant with females. His parents would not accept his marriage because he had married out of the family and married a Christian. Were he to return to Pakistan, his family would prevent him from making an entry clearance application to come and join his wife in the United Kingdom. He told me he was 32 years of age. When I asked him how his family would prevent him and why he could not return to Pakistan without returning to the bosom of his family, the appellant explained that it was a large family. I told the appellant that I was then going to hear from the Home Office after which I would invite the appellant to address me again making any further comments he wished to expand upon.

6. The Presenting Officer said that it was clear that the assertion made before the judge was that family members would object to the appellant's spouse, because of the appellant's marriage to a Christian woman. However, the judge was correct in saying that Islam permits men (although not women) to marry outside their faith, subject to their offspring being brought up within the faith. That was something which the spouse had acceded to. The judge was entitled to have regard to the fact that Muslim men are permitted to marry women outside their faith. The judge went on to note that the spouse is currently earning approximately £18,000 and that there would be obstacles in that the appellant would be returning to Pakistan on his own, but those obstacles could soon be overcome by making an application for entry clearance as a spouse. His wife had explained that she hopes to qualify this year but even if she were to acquire a part-time job bringing her salary up to £18,600 per annum such separation need not be for a long time. There was no need for the appellant to take his wife to Pakistan, because he would be able to apply for entry clearance as the spouse of someone present and settled in the United Kingdom, provided her income was sufficient.
7. I then told the appellant that he should confer with his wife to see whether either of them had any comments to specifically make on what the Presenting Officer had said. I pointed out that I had received his witness statement which was dated 2nd February 2018. Mr Bates confirmed he had a copy and I read it aloud. Having done so the appellant told me that he had got nothing further to add since what he wanted to say was already set out in the statement.
8. I reserved my determination and explained that they would receive my written decision shortly.
9. I have concluded that there is no error of law in the judge's determination which is material to the outcome of the appeal. Section EX.2 of the Immigration Rules refers to "insurmountable obstacles" and says that they mean, "*the very significant difficulties which would be faced by the applicant or their partner in continuing their life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.*" It was not suggested that the appellant's spouse should return with the appellant to live in Pakistan, but I believe the judge was entitled to find that the appellant could return to Pakistan and make an application for entry clearance as the spouse of a person present and settled in the United Kingdom. That would involve some degree of hardship, in that the parties would be separated for a while, but the appellant's spouse's income would, I was assured, increase on her graduating in August and in the meantime if she wished to take some part-time employment which took her salary above the level of £18,600, the appellant could apply without waiting until his wife had graduated. At the time of the hearing before the judge she was said to be about to start her trainee pharmacy work at approximately £18,000 per annum and as the judge said that would leave her with only an additional £600 to make up with part-time work in order to meet the threshold. I believe that the judge was entitled to find that that would not amount to an insurmountable obstacle.

10. I have concluded that the making of the decision by First-tier Tribunal Frankish did not involve the making of an error on a point of law. The appellant's appeal is dismissed.

No anonymity direction is made.

Richard Chalkley

Upper Tribunal Judge Chalkley

date 22nd February 2018

TO THE RESPONDENT
FEE AWARD

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

Richard Chalkley

Upper Tribunal Judge Chalkley

date 22nd February 2018