Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/02277/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 2 September 2014	**On 19th January 2015**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Laiba Khan
(Anonymity order not made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr. C. Mannan of Counsel instructed by Worldwide Solicitors.

For the Respondent: Ms. A. Holmes, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Pears promulgated on 19 June 2014 dismissing the Appellant's appeal against the Respondent's decision dated 20 December 2013 to refuse to vary leave to remain in the UK and to remove her pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.

Background

2. The Appellant is a national of Pakistan born on 1 December 1988.

3. The Appellants evidence before the First-tier Tribunal in respect of her early immigration history is summarised at paragraphs 12 and 13 of the determination.

> "*[A]lthough born in Pakistan, when she was three, in 1991, she and her parents emigrated to Saudi Arabia where her father was working as an electrical engineer and she attended schools in Saudi Arabia at both the primary and secondary level, taking and passing exams equivalent to 'O' and 'A' levels. There are various certificates confirming this, in the Appellants bundle from page 67ff.*
> *The Appellant first came to the UK in September 2007 and has been in the UK continuously since then, apart from between 19th March and 27th June 2012. She has therefore been in the UK for nearly 7 years, albeit not continuously and the vast part of her life has been lived outside Pakistan.*"

4. Whilst there are no express findings on this history, it does not appear to have been in dispute. Nor is there any dispute as to the more recent immigration history, which is a matter of record, as summarised at paragraphs 2 and 3 of the determination:

> "*The Appellant was, according to the Respondent's immigration history, granted leave to enter the UK as a student on 30 January 2009 with that leave valid until 31st October 2011, with the implication that she was not in the UK before that, but when according to the Appellant she entered the UK on 18 September 2007 in possession of a student visa, which was valid until October 2008.*
> *However what is clear after her leave expired, there were various problems with subsequent applications which are set out in paragraph 10-11 of the letter accompanying this application (the Respondent's documents in relation to this are at page 57ff of the Appellant's bundle), she returned to Pakistan and was there between 19th March 2012 and 27th June 2012 and whilst there she was issued with a further student visa valid until 13th November 2013.*"

5. In this context it is to be noted that the circumstances that led to the Appellant quitting the UK in order to reapply for entry clearance to return are summarised in the application letter in the following terms (and also repeated in similar terms at paragraph 9 of the Grounds of Appeal before the First-tier Tribunal):

> "*On, 30 January 2009, the Appellant was granted leave to remain in the United Kingdom and the same was valid until 31 October 2011.*
> *Thereafter, the applicant enrolled with Queen Mary University for Electrical and Electronic Engineering. Unfortunately, she did not gain the necessary credits to complete the first year of the undergraduate degree and progress onto the second year.*
> *In October 2011, the applicant made fee paid application for leave to remain in the United Kingdom. Regrettably, on 17 November 2011 her application was sent back to her being an invalid application due to the reason the bank rejected the payment.*
> *Subsequently, on 06 December 2011, the applicant submitted a fresh application for leave to remain, nevertheless, her application was refused on 06 February 2012 with no right of appeal and the applicant was left with no option but to travel to Pakistan to obtain a fresh Tier 4 (General) student visa.*"

6. On 12 November 2013 the Appellant made her most recent application, seeking leave to remain on the basis of the private life she had established in the UK.

7. The Respondent refused the Appellant's application for reasons set out in a 'reasons for refusal letter' ('RFRL') dated 20 December 2013, and a Notice of Immigration Decision, which also communicated the section 47 removal decision, of the same date was served on 24 December 2013.

8. The Appellant appealed to the IAC. First-tier Tribunal Judge Pears dismissed the appeal for reasons set out in his determination.

9. The Respondent sought permission to appeal to the Upper Tribunal which was granted on 9 July 2014 by First-tier Tribunal Judge Astle. The basis of challenge, which was considered to be arguable, was summarised by Judge Astle in the following terms:

> "*The grounds assert that the Judge's findings that the Appellant had not lost all ties to Pakistan was incorrect. Reference is made to* ***Ogundimu*** ***[2013] UKUT 60 (IAC)****. It is argued that the Judge placed weight on ties help by family members and not by the Appellant herself. It is submitted that the Judge failed to have regard to the relevant case law.*"

10. The Respondent has filed a Rule 24 reply resisting the appeal dated 21 July 2014

Error of Law

11. The issue before the First-tier Tribunal under the Immigration Rules was that of 'ties' pursuant to paragraph 276ADE(vi). The Appellant essentially relied on the fact that she had not lived in Pakistan since the age of 3, and argued that the three months spent staying with a friend of her father's in 2012 pending resolution of her entry clearance application to permit her to return to resume studies in the UK did not re-establish personal ties to Pakistan and was not otherwise evidence of such ties.

12. The First-tier Tribunal Judge's findings on this issue are set out at paragraph 24:

> "*I find that in relation to the Appellant's connection with Pakistan she attempted to minimise connections with the country and that she misrepresented certain aspects of her visit in 2012 so that her connection with Pakistan appears less than in reality it is, was or could be. I find the Appellant's father has many friends in Pakistan. I find that her family have continuing social, family or other reasons to visit Pakistan even if it is only to attend social events like weddings. I find that the Appellant has a number of maternal relations living in Pakistan. I find that she is a citizen of Pakistan who speaks Urdu as well as English. I find that she was in Pakistan as recently as 2012, for a period between March 2012 and June 2012, and that she stayed with a family friend and that she was not charged anything since I accept what her father says, and it seems highly unlikely that a family friend would, in the context of Pakistani culture, charge his friend for accommodating that friend's daughter. I accept the evidence of the father that his daughter was not as sequestered as she claims but in fact went sightseeing in Islamabad. I find therefore that she has not shown on the balance of probabilities that she has no ties with Pakistan. I therefore find that she does not meet the requirements of the immigration rules.*"

13. I accept that there is substance to the Appellant's challenge that the Judge failed to have regard to or otherwise direct himself in a manner consistent with, the guidance in **Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)**.

14. In **Ogundimu** the Tribunal considered paragraph 399A of the Rules where the same wording – "*no ties (including social, cultural or family) with the country to which he would have to go*" – appears. Paragraph 4 of the headnote is in these terms:

> "*The natural and ordinary meaning of the word 'ties' in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has 'no ties' to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances*".

15. See further in this context paragraphs 119-25 of **Ogundimu**. The use of the same wording in paragraph 276ADE of the Rules is expressly recognised in **Ogundimu**: see paragraph 122. I note in particular the following passages from paragraphs 123 and 125:

> "*The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.*" And –

> "*Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.*"

16. Of the factors identified by the Judge at paragraph 24 as relevant to his assessment, the first two do not relate to the Appellant personally. It is perhaps of no great surprise that her parents have friends in Pakistan and social, family and other reasons for visiting. The Appellant's parents did not move to Saudi Arabia until they were married adults with a young family; necessarily they had grown up and reached maturity in Pakistan and

so retain connections with their peer group. That is not the Appellant's experience: leaving Pakistan at the age of 3 she has no such peer group connection; her parents' connections to an historical social life and cultural experience in Pakistan are not her connections or experiences. The Judge was in error to accord such matters weight.

17. Whilst the Appellant has Pakistan nationality, I note what is said in **Ogundimu** in this regard: that nationality alone will not suffice. It seems to me that other concepts inherent in originating from the country of proposed return – such as language – are not inevitably in themselves matters that continue a real connection to life in the country of origin. In my judgement the fact that the Appellant has had exposure to a cultural heritage through her parents to an extent that she is an Urdu speaker – which by its nature will always be part of her experience – is not equivalent to her having a current cultural tie. Indeed, in general terms. Further, whilst I accept that not being able to speak the language of a country is a powerful indicator of an absence of ties, I do not accept that the obverse is the case: an ability to speak the language is not a strong indicator of ties. For example, the fact that a Canadian citizen is able to speak English is not a reliable indicator of a connection with, say, the United Kingdom; or of another Canadian citizen is fluent in French, it does not in itself indicate a tie with France.

18. In my judgement, in the absence of a self-direction in respect of **Ogundimu**, it appears that the First-tier Tribunal Judge has placed undue weight both on the fact of nationality, and on the Appellant's ability to speak Urdu.

19. I consider these errors inevitably impact upon the way in which the Judge has approached the issue of the Appellant's stay in Pakistan in 2012. In this context, in any event, I am unable to identify what particularly is considered to be material in respect of any distinction between having spent such a period 'sequestered' as opposed to undertaking sightseeing. Without more, time spent sightseeing does not establish a relevant tie or connection in circumstances where there was no such pre-existing tie or connection.

20. Be that as it may, even absent this latter factor, I am satisfied that the Judge's assessment involved material errors to an extent that the decision in the appeal must be set aside.

Re-making the Decision

21. Both representatives indicated that in the event that I were to conclude that there had been an error of law, the submissions made in respect of the error of law issue were relevant to the issue of remaking the decision; that neither had any further submissions in this regard; and nor was it necessary to consider any further oral evidence. The parties were content for the Tribunal to remake the decision on the basis of the available evidence, the findings of primary fact in the decision of the First-tier Tribunal, and in light of the submissions already made in respect of paragraph 276ADE(vi).

22. I have directed myself in accordance with the guidance in **Ogundimu** and the wording of paragraph 276ADE(vi) as it stood at the date of the Respondent's decision. I have reminded myself that the burden of proof is on the Appellant to demonstrate on a balance of probabilities that she meets the requirements of the Immigration Rules.

23. For the reasons already identified I do not accept that the Appellant's parents' social connections with Pakistan are to be relied upon as indicating that the Appellant has a continuing connection with life in the country that she left at the age of 3, over 20 years previously.

24. The parents' family connections with Pakistan are to be considered as distinct from social connections beyond family. The parents' relatives are also the Appellant's relatives – albeit one step further removed. However, on the particular fats of this case I find that the presence in Pakistan of the Appellant's mother's relatives does not constitute relevant 'ties' under paragraph 276ADE(vi) because the Appellant has no recent contact with them. Indeed in her oral evidence before the First-tier Tribunal she was uncertain whether her mother's sister had children – stating no more than that she 'probably' did (paragraph 22). In a similar way, members of the extended family on her father's side are not persons with whom she has any personal contact of actual connection. In this context it is to be noted that when the Appellant went to Pakistan in 2012 it was not with family members that she stayed but with a friend of her father: this underscores the absence of any particular personal family-based tie with Pakistan.

25. Further, I am satisfied on a balance of probabilities that the Appellant's visit to Pakistan for a period of three months - only arranged because of the expediency of regularising her immigration position in the United Kingdom by making an application from abroad – is not indicative of having re-established a connection with life in Pakistan. The Appellant undertaking activities of sightseeing

does not adequately demonstrate an establishment of relevant ties. In this context it seems to me of significance that the Appellant would have perceived her visit to Pakistan as being essentially temporary in nature, and so would not have been seeking to establish anything meaningful by way of social connection.

26. I find that the Appellant has had no meaningful personal connection with life in Pakistan since her departure at the age of 3. Her consciousness of any such ties at that time is likely to have been minimal, and in any event to have been eroded with the passage of time. The recent visit in 2012 - prompted by expediency rather than desire, and intended as temporary - did not, I find, lead to the establishment of significant connections.

27. Looking at the case on its own facts and having regard to all relevant circumstances (**Ogundimu** paragraph 25), I find that the Appellant does not have any connection to life in Pakistan.

28. In all such circumstances I am satisfied that the Appellant met the requirements of paragraph 276ADE(vi), and in such circumstances should have been granted a period of leave pursuant to paragraph 276BE. The Respondent's decision was not in accordance with the Immigration Rules.

Notice of Decision

29. The decision of the First-tier Tribunal Judge contained an error of law and is set aside.

30. I remake the decision in the appeal. The appeal is allowed.

Deputy Judge of the Upper Tribunal I. A. Lewis 16 January 2014