



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

Appeal Number: AA/00032/2016

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision & Reasons**

**On 4<sup>th</sup> September 2017**

**Promulgated**

**On 15<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**RF  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Aihe of Wisestep Immigration Specialists

For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appealed against a decision of Judge Tobin of the First-tier Tribunal (the FtT) promulgated on 15<sup>th</sup> September 2016.
2. The Appellant is a male citizen of Pakistan born [ ] 1983. He claimed asylum on 5<sup>th</sup> January 2015 on the basis that he feared persecution in Pakistan because of his marriage to his partner, who is an Indian citizen. The Appellant claimed that he was entitled to asylum or humanitarian

protection, and his removal from the UK would breach Articles 2, 3 and 8 of the 1950 European Convention on Human Rights (the 1950 Convention).

3. The Appellant's claim was refused on 22<sup>nd</sup> December 2015. His subsequent appeal was dismissed by the FtT on all grounds. The FtT did not find that the Appellant would be at risk if returned to Pakistan, and did not accept that his removal would breach any of his human rights protected by the 1950 Convention.
4. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by Judge Saffer. Solicitors who were then acting on behalf of the Appellant submitted a renewed application for permission to appeal, contending that the FtT had erred in law in considering Article 8.
5. Permission to appeal was granted by Upper Tribunal Judge Lindsley who found it arguable that the FtT had erred in law in failing to consider extensive mental health evidence in relation to the Appellant's partner, and failing to consider the background to her grant of discretionary leave in the UK, which would appear to have been due to her being a victim of family based violence in this country, and this may have been relevant when options for the couple's relocation was being considered.

### **Error of Law**

6. On 1<sup>st</sup> June 2017 I heard representations from both parties in relation to error of law. Full details of the application for permission, the grant of permission, the oral representations made, and my conclusions are contained in my decision dated 5<sup>th</sup> June 2017, promulgated on 13<sup>th</sup> June 2017.
7. I found that the FtT had erred in law in considering Article 8. There had been no challenge to the FtT findings in relation to asylum, humanitarian protection, and Articles 2 and 3 of the 1950 Convention. I set out below paragraphs 18-25, which contain my conclusions and reasons for setting aside the FtT decision in relation to Article 8;
  - "18. The application for permission to appeal, which was considered by Judge Lindsley, did not contend that the FtT had erred in law in considering risk on return or protection issues. The application was made on the basis that the FtT had erred in considering Article 8, and Judge Lindsley granted permission on that basis.
  19. The Respondent, in the refusal decision, accepted that the Appellant and his partner are in a relationship. The FtT finding on this is unclear. At paragraph 15 the FtT describes the Appellant and his partner as being in some form of supportive relationship, but states that there are "doubts that they are in a genuine and subsisting relationship".
  20. At paragraph 29 the FtT, when referring to the Appellant's partner, states that "if Ms V is in a genuine and substantive relationship with

the Appellant she may initially have to apply for a temporary visa for Pakistan – or even a succession of temporary visas – until her immigration status becomes established in Pakistan”. In my view, a clear finding needs to be made by a Tribunal, as to whether it is accepted that the couple are in a genuine and subsisting relationship.

21. Article 8 is considered briefly by the FtT, the findings being contained in paragraph 29.
  22. The status of the Appellant’s partner in the United Kingdom is unclear. She previously had discretionary leave, but at the date of hearing before the FtT appeared to have no leave. The Appellant, before the Upper Tribunal, indicated that his partner has solicitors acting on her behalf in relation to her immigration status.
  23. I find that the FtT erred in law in failing to consider the mental health of the Appellant’s partner when considering Article 8, and the ability of the couple to live together in Pakistan. It is clear that there was evidence before the FtT, in relation to the partner’s mental health. The Respondent’s own guidance on whether there are insurmountable obstacles to family life continuing outside the United Kingdom, makes specific reference to the impact of any mental disability, which in some cases could amount to serious hardship, depending upon the circumstances and the availability of healthcare.
  24. The failure to consider the partner’s mental health, amounts to a material error of law and I find that the decision of the FtT therefore needs to be set aside.
  25. However, no error of law is disclosed in the findings of the FtT in relation to asylum, humanitarian protection, and Articles 2 and 3. Those findings are therefore preserved.”
8. The hearing on 1<sup>st</sup> June 2017 was adjourned so that the decision could be re-made by the Upper Tribunal after further evidence was given.

## **Re-making the Decision - Upper Tribunal Hearing 4<sup>th</sup> September 2017**

### **Preliminary Issues**

9. The Appellant attended the hearing. There was no need for an interpreter.
10. Directions had been made that any further documentation to be relied upon by the Appellant should be lodged with the Tribunal and the Respondent no later than fourteen calendar days before the hearing. Unfortunately those directions had been disregarded and Mr Bates was served with the Appellant’s bundle of documents on the morning of the hearing, the Tribunal having received the bundle on 1<sup>st</sup> September 2017. In addition to the bundle Mr Aihe served further documents which are not included in a bundle and are not paginated. Mr Aihe numbered some of these documents 3-9, and in addition to taking into account the Appellant’s bundle indexed 1-9, I took into account further documentary evidence in relation to the partner’s mental health, those being a fax

dated 20<sup>th</sup> January 2014 together with risk follow-up, a letter dated 17<sup>th</sup> January 2014, a fax dated 11<sup>th</sup> December 2014 and risk follow-up, and letters dated 13<sup>th</sup> January 2015, 3<sup>rd</sup> February 2015, 13<sup>th</sup> December 2016, 24<sup>th</sup> August 2017, and 3<sup>rd</sup> September 2017.

11. In view of the late service of documents Mr Bates would have been entitled to apply for an adjournment but did not do so. He requested that the case be put back to enable him to consider the documents, which request was granted.
12. When the hearing resumed both representatives indicated that they were ready to proceed. In addition to the documentation referred to above, the Tribunal had the Home Office bundle with Annexes A-E which had been before the FtT.
13. Mr Aihe confirmed that the Appellant accepted that he could not satisfy the requirements of Appendix FM in relation to family life. He relied upon paragraph 276ADE(1)(vi) in relation to private life, and also relied upon Article 8 outside the Immigration Rules. Mr Aihe confirmed that the Appellant would be giving oral evidence. His wife was present in the hearing room but Mr Aihe considered that she was not fit to be called to give evidence.
14. Mr Bates confirmed that it was accepted that there is a genuine and subsisting relationship between the Appellant and his partner.

### **The Appellant's Oral Evidence**

15. The Appellant adopted as his evidence his witness statement dated 4<sup>th</sup> September 2017. He was questioned by both representatives. I have recorded all questions and answers in my Record of Proceedings and it is not necessary to reiterate them in full here. I set out below a summary of the Appellant's case.
16. The Appellant came to the UK as a student in October 2005. He did not complete his studies as he suffered from depression, but he currently does not have any mental health issues. The Appellant returned to Pakistan in March 2007 for one month, before coming back to the UK.
17. The Appellant's leave as a student ended on 31<sup>st</sup> January 2009. He has overstayed without leave. He made an asylum claim in July 2014 which he subsequently withdrew. He made a further appointment to claim asylum in December 2014, and underwent a screening interview on 5<sup>th</sup> January 2015, and substantive asylum interviews on 10<sup>th</sup> June 2015 and 21<sup>st</sup> September 2015. His asylum and human rights claim was refused on 22<sup>nd</sup> December 2015.
18. The Appellant met his partner, who is an Indian citizen, in 2013 in the UK. She had come to the UK from India with her husband. She had been subjected to domestic violence and separated from her husband, although there is no evidence that she is divorced.

19. The Appellant and his partner started living together in 2013. They underwent an Islamic marriage in this country on 16<sup>th</sup> January 2015. They were not issued with documentation to prove this because they had been unable to supply the required identification documents.
20. Initially the Appellant claimed to be at risk if returned to Pakistan because of his marriage to an Indian citizen. The FtT found that he would not be at risk and those findings have been preserved. The Appellant's family in Pakistan do not approve of his relationship, and his partner's family in India do not approve of the relationship.
21. The Appellant contends that he is his partner's carer and that she has very significant mental health problems, and that there is documentary evidence to prove this. His partner has tried to self-harm in the past. The Appellant's case is that his partner would not be allowed to enter Pakistan with him, because she is an Indian citizen, and she could not manage without him if she remained in the UK and he returned to Pakistan. Separation would bring about an increased risk of his partner committing suicide.
22. The Appellant could not live in India with his partner. He contends that his partner's family made a complaint to the Indian police about him, although the complaint is completely without foundation. Therefore, the Appellant's case is that because he and his partner could not live in either India or Pakistan, he should be granted leave to remain in the UK on the basis of his private and family life.

### **The Respondent's Oral Submissions**

23. Mr Bates submitted that the appeal should be dismissed, and pointed out that neither the Appellant nor his partner has any leave to remain in the UK. Mr Bates indicated that the Appellant's partner had made an application for further leave to remain, and a decision on that application was pending. The parties had entered into a relationship when they knew that their immigration status was precarious.
24. Mr Bates did not dispute the evidence that had been submitted in relation to the partner's mental health. He submitted that the crucial issue in the appeal was proportionality.
25. It was submitted that the Appellant had not proved that his partner would not be allowed to enter Pakistan. They could travel to Pakistan together, which would mean that there would be no separation, and therefore no risk of an adverse effect upon the partner's mental health. I was asked to find that the Appellant had not discharged the burden of showing that he could not reasonably return and settle in Pakistan. There was no reason why the Appellant could not find employment in Pakistan.

### **The Appellant's Oral Submissions**

26. Mr Aihe relied upon the skeleton argument at 1(a)-1(e) of the Appellant's bundle. I was asked to allow the appeal. I was asked to note that the Appellant's partner had entered the UK with valid leave, and her past experiences of domestic violence must be taken into account.
27. I was asked to find that the Appellant and his partner would not be allowed to return to Pakistan and live together. Although they had married under Islamic law, they had not been issued with a Nikah document. If the Appellant returned to Pakistan without his partner, there would be a separation which would have a detrimental effect upon the partner's mental health and would be disproportionate.
28. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Findings**

29. The findings made by the FtT in relation to asylum, humanitarian protection, Articles 2 and 3, and risk on return have been preserved. I summarise those findings below.
30. At paragraph 17 of the FtT decision it was found the Appellant would not be at risk from either the police or the military as a failed asylum seeker if returned to Pakistan. Return to Pakistan would not cause significant difficulties for either himself or his partner.
31. At paragraphs 19 and 20 the FtT found that the Appellant's partner is a Muslim, the same religion as the vast majority of citizens in Pakistan. The FtT did not accept the Pakistani authorities would attempt to kill or harm the Appellant or his partner simply because a Pakistani Muslim had married an Indian Muslim. The FtT found the Appellant's claim to have been threatened by his family because of his marriage to be "vague and unconvincing".
32. At paragraphs 21-23 the FtT did not accept that the political party in Pakistan (the PTI) to which the Appellant's mother belongs, was hostile towards Indian Muslims. The FtT found that the Appellant's partner did not represent any security threat. The FtT found that should the Appellant return to Pakistan and wish to avoid his family, there was a reasonable internal relocation option.
33. At paragraphs 24-28, the FtT summarised its conclusions, by confirming, having taken into account the low standard of proof, that the Appellant was not entitled to refugee status, neither was he entitled to be granted humanitarian protection, because there was no reasonable degree of likelihood that he would be killed or that he would suffer harm if returned to Pakistan, and there would be no breach of Articles 2 or 3 of the 1950 Convention.
34. The above findings were not subject to challenge, and therefore no permission to appeal was granted in respect of them, and the findings are preserved.

35. The issue before me relates to Article 8. I firstly have to consider whether Article 8 is engaged. I find that it is, both in relation to family and private life. For ease of reference I set out below Article 8;

**'Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
  2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'
36. The burden of proving that he has established a family and/or private life is on the Appellant. The standard of proof is a balance of probabilities. In my view, if a private and family life has been established, it is for the Respondent to prove that the decision appealed against is proportionate.
37. I make the following findings of fact. The Appellant arrived in the UK as a student in October 2005. His leave was valid until 31<sup>st</sup> January 2008. He returned to Pakistan for one month in March 2007. His student leave was extended until 31<sup>st</sup> January 2009. On that date he made an application for further leave to remain which was refused on 13<sup>th</sup> July 2007.
38. He claimed asylum in July 2014 and subsequently withdrew that claim, making a further leave to remain application on 22<sup>nd</sup> July 2014. This was refused without a right of appeal on 28<sup>th</sup> November 2014. The Appellant made an appointment to claim asylum on 11<sup>th</sup> December 2014, and his screening interview took place on 5<sup>th</sup> January 2015. His asylum and human rights claim was refused on 22<sup>nd</sup> December 2015.
39. The Appellant's partner, who was born in June 1985, was granted leave to enter the UK on 11<sup>th</sup> February 2010 as the partner of a person settled in this country. Her leave was valid until 21<sup>st</sup> February 2012. She arrived in the UK on 1<sup>st</sup> March 2010. On 22<sup>nd</sup> February 2012 she applied for further leave to remain as the partner of a person settled in the UK and this application was granted until 22<sup>nd</sup> April 2013.
40. On that date she applied for further leave to remain as a dependent partner and this application was granted until 29<sup>th</sup> December 2014. She made an asylum claim on 19<sup>th</sup> May 2013 which was refused on 19<sup>th</sup> August 2013 but she was granted discretionary leave to remain on the basis that she was a witness in a criminal trial. She was granted further leave to remain on the same basis on 7<sup>th</sup> August 2014 until 6<sup>th</sup> February 2015. She then made an application for further leave to remain on 22<sup>nd</sup> January 2015 which was refused on 3<sup>rd</sup> March 2016. The criminal trial has been concluded. I accept that the Appellant's partner has a further application for leave to remain awaiting a decision from the Respondent.

41. I accept that the Appellant and his partner met in the UK in 2013 and commenced a relationship. They started living together. They underwent an Islamic marriage on 16<sup>th</sup> January 2015. It is not clear whether the Appellant's partner has been divorced from her previous husband who was abusive towards her. I find, as is accepted by the Respondent, that the Appellant and his partner are in a genuine and subsisting relationship and wish to live together permanently.
42. I find that the couple entered into a relationship when the Appellant had no leave. He has had no leave since 2009 and has been an overstayer since that time. When they entered into the relationship the Appellant's partner had separated from her husband, and she had a precarious immigration status in that she only had limited leave to remain. Neither the Appellant nor his partner have any current leave to remain in this country. Their marriage is not recognised under the civil law in the UK. In considering Article 8, I adopt the balance sheet approach recommended by Lord Thomas at paragraph 83 of Hesham Ali v SSHD [2016] UKSC 60, and in so doing have regard to the guidance as to the functions of this Tribunal given by Lord Reed at paragraphs 39 to 53.
43. The Appellant has the burden of establishing his personal circumstances in the UK, and why the decision to refuse his human rights claim will interfere disproportionately in his private and family life rights in this country. It is for the Respondent to establish the public interest factors weighing against him. The standard of proof is a balance of probabilities throughout.
44. It is necessary to consider whether the Appellant can satisfy the Immigration Rules in relation to Article 8. So far as family life is concerned, it is accepted on his behalf that he cannot satisfy the requirements of Appendix FM. I find this to be correct. The relationship requirements set out in E-LTRP.1.2 are not satisfied, as the Appellant's partner is not a British citizen, neither is she present and settled in the UK, and she does not have refugee leave and has not been granted humanitarian protection. Turning to consider paragraph 276ADE(1) which contains the requirements to be met for leave to remain on the grounds of private life, the only provision which could apply to the Appellant is (vi) which involves the Appellant proving on a balance of probabilities that there would be very significant obstacles to his integration into Pakistan. I find that the Appellant has not discharged the burden of proof. This is because I find that he would not be at risk if returned. He is a Pakistani citizen and has lived the majority of his life in that country. He does not have any relevant health issues, and would have no linguistic or cultural difficulties. The Appellant is highly educated, and in my view he could return to Islamabad where his family live, and in the alternative, he has a reasonable relocation option to any other part of Pakistan including any of the major cities. I find that no adequate reason has been given as to why the Appellant could not find employment and accommodation. I therefore conclude that this appeal cannot succeed with reference to paragraph 276ADE(1)(vi).



45. Turning to consider Article 8 outside the Immigration Rules, as I find that the Appellant has established both family and private life, I must consider section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). This provides that the maintenance of effective immigration control is in the public interest. It is in the public interest that a person seeking leave to remain can speak English. I am satisfied that the Appellant can speak fluent English, although this must be regarded as a neutral rather than a positive factor in his favour.
46. It is in the public interest that a person seeking leave to remain is financially independent. I do not find that there is adequate evidence to prove that the Appellant is financially independent. I find that in the past he has worked illegally, but there is no evidence that he currently has permission to work, and there is no evidence that his partner is currently working. I therefore do not find that he is financially independent, but even if he was, that again would only be a neutral factor rather than a positive factor in his favour.
47. According to section 117B(4) little weight should be given to a private life, or a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the UK unlawfully. I accept that this does not mean that no weight must be attached, but in my view I must attach little weight to the private life established by the Appellant since 2009 as he has been in this country unlawfully since that time. A qualifying partner is a partner who is a British citizen or settled in the UK. The Appellant therefore does not have a relationship with a qualifying partner.
48. Section 117B(5) provides that little weight should be given to a private life established by a person when the person's immigration status is precarious. Having limited leave to remain means having a precarious immigration status. I therefore must attach little weight to the private life established by the Appellant between 2005 and 2009 when he had limited leave to remain as a student.
49. In considering Article 8, I consider not only the Appellant, but also his partner. She has only ever had limited leave to remain, which was initially granted on the basis of her marriage to a person settled in the UK, and subsequently because she was to be a witness in a criminal trial. She has therefore only ever had a precarious immigration status and currently has no leave.
50. I accept that the Appellant's partner has mental health issues commencing in 2013. I have considered all the medical evidence submitted on her behalf. The most recent letter from a consultant psychiatrist was written by Dr Alachkar on 24<sup>th</sup> August 2017, addressed to the partner's general practitioner. This confirms a diagnosis of recurrent depressive disorder, confirming moderate depression currently, mainly related to uncertainty about the immigration status of herself and the Appellant. Medication is 200 mg Sertraline daily. There is reference to the partner, a few weeks

prior to the letter being written, taking an overdose of between fifteen-twenty sleeping tablets. The Appellant made her vomit. Dr Alachkar confirms that the partner remains at high risk of suicide if a decision was made which required her to be parted from the Appellant. Dr Alachkar confirmed that the partner was to be referred for further counselling.

51. The most recent medical letter is written by Dr Arora, the partner's GP, who has been involved with her care since December 2016. Dr Arora makes reference to acute anxiety and severe depression with a history of past and recent suicide attempts, and ongoing post traumatic stress.
52. The medical evidence in relation to the Appellant's partner has not been challenged by the Respondent and is therefore accepted.
53. The view of the medical professionals involved with the partner, is that there would be an increased risk of suicide if the partner had to be separated from the Appellant. The Appellant's case is that his partner would not be allowed to live with him in Pakistan. That I do not accept.
54. The visa policy of the Pakistani government is set out in a document at page 5g of the Appellant's bundle. Basic requirements for obtaining a visa are to have a valid passport, which is valid for at least one year. The Appellant stated that his passport and that of his partner are held by the Home Office. There was no indication that they are not valid. In the event that the partner does not have a valid passport, there is no reason why there should not be an application for a new passport to be issued. The partner would be eligible for a visitor's visa to Pakistan. These visas can be extended.
55. The Appellant and his partner have entered into an Islamic marriage which would be recognised in Pakistan. If they produce passports by way of identification, no reason has been given as to why they should not be issued with a Nikah.
56. I therefore find that the Appellant has not proved that his partner would be refused entry into Pakistan. I also find that the Appellant has not proved that his marriage would not be recognised in Pakistan.
57. It has not been suggested on behalf of the Appellant that his partner would not receive the appropriate medical treatment in Pakistan. It has not been contended that treatment is not available, and it has not been contended that the medication she currently receives is not available. If the partner chose to return to Pakistan with the Appellant, there would be no separation, and therefore medical evidence indicates that there would be no adverse effect upon the partner's mental health. I find that any medication and medical treatment required by the partner would be available in Pakistan.
58. I have considered all of the evidence, and considered that evidence in the round. The Appellant would not be at risk. He is highly educated. I accept

that the Appellant and his partner wish to remain in the UK, and I have taken that into account. However, I have also taken into account the need to maintain effective immigration control, and the weight that must be attached to effective immigration control. The Appellant and his partner currently cannot satisfy the Immigration Rules in order to be granted leave to remain. The Appellant could find employment in Pakistan and provide for himself and his partner. I therefore conclude that the Respondent has proved that the decision made in the Appellant's case is proportionate, and if the Appellant was removed from the UK, his partner could accompany him, and there would be no breach of Article 8. Therefore the appeal must be dismissed.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law such that it was set aside. I substitute a fresh decision as follows.

The appeal is dismissed on all grounds.

### **Anonymity**

The FtT did not make an anonymity direction. However, I have decided that such a direction is appropriate because this appeal involves considering the mental health of the Appellant's partner. Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made pursuant to rule 14 of The Tribunal (Upper Tribunal) Procedure Rules 2008.

Signed  
2017

Date 11<sup>th</sup> September

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed  
2017

Date

11<sup>th</sup>

September

Deputy Upper Tribunal Judge M A Hall