**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/08267/2016

**THE IMMIGRATION ACTS**

| **Heard at Royal Courts of Justice** | **Decision & Reasons Promulgated** |
|---|---|
| **On 7th August 2017** | **On 5th September 2017** |

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR NASAR MIRZA**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Bandegani instructed by Duncan Lewis Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan and he appealed against the respondent's decision dated 21st March 2016 to refuse his human rights claim. The appellant is subject to deportation because of persistent

criminal behaviour. The copy of his police national computer printout reveals convictions on twelve occasions for 25 offences, the first being on 24th February 1998 and the most recent being on 26th November 2015. On 12th December 2008 the appellant pleaded guilty to assault occasioning actual bodily harm and was sentenced to three years' imprisonment where it appears he attacked a neighbour with a screwdriver.

2. The appellant was liable to automatic deportation and on 13th July 2010 the respondent decided to revoke the appellant's indefinite leave to remain, however his appeal to the First-tier Tribunal was successful. The findings from the First-tier Tribunal decision in 2010 are set out extensively at [13] and [14] in the decision of First-tier Tribunal Judge Pooler currently under challenge.

3. The decision recorded that the appellant was released on licence but was recalled to prison after breaching the licence terms. There followed further offending and on 29th August 2012 the appellant was sentenced for offences of battery in which the victim had on both occasions been his wife and he received concurrent terms of twelve weeks and eighteen weeks' imprisonment with a restraining order [16]. A deportation order was signed on 21st June 2013 and the appellant lodged an appeal and this appeal was allowed on Article 8 grounds in a determination promulgated on 22nd October 2013 [17].

4. The determination of 2013, as recorded, made clear that deportation decisions had been made in respect of the appellant, his wife and their son, N, and the findings in that determination were set out by First-tier Tribunal Judge Pooler in the decision under challenge at paragraphs 18 and 19, 20 and 21.

5. First-tier Tribunal Judge Pooler dismissed the appellant's appeal on human rights grounds.

6. An application for permission to appeal was initially refused by the First-tier Tribunal. The grounds set out as follows:-

   (i) The First-tier Tribunal Judge found at paragraph 56 that the Tribunal who heard the appellant's appeal in 2013 made no specific finding as to whether the appellant had any ties to Pakistan and thereby dismissed that aspect of the submissions. The argument was made that if a previous Tribunal had found the appellant had "no ties" to Pakistan in 2013, which was part of the test at that time, it would be irrational to conclude four years later that there were "very significant obstacles to integration" which would include having ties to Pakistan. The Tribunal in the determination of 2013 made a specific finding at paragraph 37 (respondent's bundle H8) that:-

      "*On a further and alternative basis where we have not referred to elements set forward in Mr Ansari's comprehensive skeleton argument we allow the appeal of each Appellant on the bases set*

> *forward by Mr Ansari in respect of each element advanced by him in his skeleton argument.*"

In that skeleton argument it was clearly set out at paragraphs 50 and 51 why the appellant had no ties to Pakistan. By ignoring this, First-tier Tribunal Judge Pooler erred in law. This finding by the judge further infected his findings at paragraph 57 that the appellant would be able to access accommodation in Pakistan. This matter was mentioned in the 2013 skeleton argument at paragraph 51 where it stated:-

> "*The First Appellant has not visited Pakistan since he married his wife and has no contact with his extended family. The First Appellant's in-laws live in very cramped and overcrowded conditions already ... and have two more adults and two children move in would be oppressive on all concerned, not least all of the children.*"

The judge also failed to give sufficient weight to the evidence of the appellant's wife about the lack of accommodation which was set out in her witness statement.

Applying **Devaseelan [2002] UKIAT 00702** this should have been the starting point for the First-tier Tribunal Judge's consideration. It was not open for the judge to make a finding that the appellant would be able to access accommodation in Pakistan.

(ii) The judge also erred in placing too much weight on the report of Dr Willemsen. Earlier in the determination the judge placed limited weight on Dr Cohen's report and yet placed considerable weight on Dr Willemsen's report, particularly that the wife had been pressurised by the appellant's family. Dr Willemsen had no contact with the appellant's wife or his other family members, and similarly had no access to the documents that were available to the judge in the appeal. Dr Willemsen states in his report the only documents he had access to were the letter of instruction from Social Services, Practice Directions, the Child Protection Review Conference Workers' Report and the Child and Family Assessment. It was irrational for the judge to place limited weight on one expert report for the same reasons which undermine the credibility of another.

(iii) The judge had erred as he should have placed weight on the fact the appellant did not have a family solicitor that could have advised on the contents of the report and provided the appellant's written feedback before it was finalised.

(iv) The judge finding at paragraph 40 that the appellant would be unwilling to co-operate with Social Services or attend courses in relation to anger management was irrational in these circumstances. The appellant was engaging with Dr Willemsen, a voluntary action,

and the attempts to engage with Social Services were hampered by his lengthy detention under immigration powers.

This error infected the judge's finding at paragraph 53 that it would not be unduly harsh for the children to remain in the UK without the appellant on the basis that potential for development of a relationship be one of occasional contact appeared remote. Deporting the appellant would destroy family life, whereas allowing him to remain and have contact with his children subject to the provisos he engaged with Social Services would enable it to recommence.

(v) The judge also erred in his finding at 64 that the appellant's wife was granted leave as a victim of domestic violence. The appellant's wife enjoyed discretionary leave to remain at the time the application was made on her behalf by Social Services. No evidence was provided that leave was granted, and indeed the evidence showed that the wife was granted leave for an additional three year period on 17th March 2015 which was suggested she was never granted another form of leave.

Grant of Permission

7. In granting permission Upper Tribunal Judge Perkins noted that the grounds recognised that the Tribunal in 2017 had to consider if there were "very significant obstacles" in the way of the appellant's integration into society in Pakistan. The tests were not so similar that it was irrational to find that there were no very significant obstacles where there are 'no ties' but it was not clear to him that the findings in 2017 about the appellant's prospects of obtaining accommodation were based on new evidence, rather they appeared to be based on fresh findings on old evidence without acknowledging the previous findings. Further it was not clear if the "very significant obstacles" test should have regard to the nature and extent of offending.

8. Upper Tribunal Judge Perkins noted that the Tribunal in 2013 somewhat enigmatically allowed the appeal saying at paragraph 37:-

> "*On a further and alternative basis where we have not referred to elements set forward in Mr Ansari's comprehensive skeleton argument we allow the appeal of each appellant on the bases set forward by Mr Ansari in respect of each element advanced by him in his skeleton argument*".

9. All grounds were considered arguable.

10. At the hearing before me Mr Bandegani submitted that the First-tier Tribunal Judge had misdirected himself by concluding that there were no previous findings by a Tribunal that the appellant had no ties to Pakistan. The tests were expressed differently but they required essentially the same or very similar factual enquiries. Those tests demanded an

assessment of all relevant facts that went beyond the simple question of whether there were ties. There needed to be a broad evaluative finding which meant that it could not be said that the judge's failure to refer to previous fact-finding was not relevant. Mr Bandegani referred me to paragraphs 123 to 125 of **Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC)**:-

> "*123. 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.*
>
> *124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there. Unsurprisingly, given the length of the appellant's residence here, all of his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.*
>
> *125. 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.*"

11. It was argued that paragraph 37 of **Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 00013 (IAC)** was relevant. Mr Bandegani submitted that the tests were the same or demanded a similar approach. Even if they were not the same any previous finding in relation to the appellant having no ties was capable of being influential in the assessment and this was therefore material.

12. I was referred to paragraphs 50 and 51 of the skeleton argument submitted before the First-tier Tribunal in 2013 and which should have been factored into the account and were not. Mr Bandegani submitted that the judge had simply said that there was no such finding. It was not sufficient to adopt the insensitive approach of the Secretary of State by simply assessing nationality and in 2013 the First-tier Tribunal had accepted the case advanced by the appellant in preference to that of the Secretary of State. The submission accepted that the appellant was all but British save for his nationality should have been addressed. The point of his nationality sat uneasily with the findings of fact made by the previous Tribunal in 2013 and the judge should have explained why it was not relevant. The whole of her analysis was at paragraphs 56 and 57. The only finding which remained relevant was that the appellant was familiar with Urdu.

13. Mr Tufan stated that the judge *had* considered whether there were very significant obstacles noting that **Ogundimu** was out of date. The current test was that set out in **Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 00415 (IAC)**.

14. Essentially the appellant could not satisfy paragraph 399A(c) and the test was not the same. There were flimsy findings of fact incorporated into the decision of 2013 and that appeal was allowed on different grounds. **Treebhawon** was not a deportation case, rather dealing with Section 117, and **Kamara [2016] EWCA Civ 813** was a case which turned on its own facts. The appellant in this case had been to Pakistan on a number of occasions and that is where he had found his wife. The appellant was familiar with Urdu. There were no errors of law in the decision and it should stand.

15. Mr Bandegani submitted that **Kamara** was the leading authority. It was incorrect to characterise the findings of the judge in 2013 as speculative. The previous findings of the Tribunal included an acceptance that the appellant had no ties and were relevant. This appellant was essentially undistinguishable from a person of British nationality and that was what was represented in the skeleton argument of Mr Ansari.

## Conclusions

16. It appeared to be accepted that the appellant had lived most of his life in the UK and the previous decision of 18th November 2010 relating to this appellant at paragraph 91 established:-

"*We deduce that there may well be a wide cultural difference between the appellant who is indistinguishable from a man of his age born and brought up here but of British origins from his wife who has not had that life-long experience*".

17. This finding appeared to acknowledge that although not British the appellant had lived in the United Kingdom for an extensive period and was indistinguishable from someone who was British. In this case the respondent had accepted that the appellant was socially and culturally integrated into the United Kingdom. He still however remains a Pakistan national and was classified as a foreign criminal through being a persistent offender. The Immigration Rules, as presently drafted, however, set out a cumulative set of conditions

> *399A. This paragraph applies where paragraph 398(b) or (c) applies if –*
>
> *(a) the person has been lawfully resident in the UK for most of his life; and*
> *(b) he is socially and culturally integrated in the UK; and*
> *(c) there would be very significant obstacles to his integration into the country to which it is proposed he is deported*

18. It was the issue in relation to the last criterion, that 'of very significant obstacles' which was the crux of the challenge. The Tribunal decision of 2013, most unfortunately, in its findings for the appellant made reference to a document which was not attached to the decision stating at paragraph 37:-

> "*On a further and alternative basis where we have not referred to elements set forward in Mr Ansari's comprehensive skeleton argument we allow the appeal of each Appellant on the bases set forward by Mr Ansari in respect of each element advanced by him in his skeleton argument.*"

19. The skeleton argument of Mr Ansari which was produced to the First-tier Tribunal Judge, set out at paragraphs 49 to 51, as follows:-

> "*49. The first appellant falls within the private life exception contained in paragraph 399A of the Rules.*
>
> *50. The respondent disputes this on the basis that she believes the first appellant has ties to Pakistan based on his having grown up in a Pakistani household and therefore being familiar with Pakistani culture, customs and lifestyle, his having spent a few months there with his wife on less than a handful of occasions before she came to the UK, on assumption that he speaks Urdu, and the presence of extended family and his wife in Pakistan.*
>
> *51. The first appellant had grown up in the UK and despite living in a Pakistani household, 'for all practical purposes he is indistinguishable from a person of British nationality born and*

> *brought up here' as was determined by an Immigration Judge in his original appeal in 2010 (respondent's bundle K2). The first appellant has not visited Pakistan since he married his wife and has no contact with his extended family. The first appellant's in-laws live in very cramped and overcrowded conditions already (appellant's bundle 23) and to have two more adults and two children move in would be oppressive on all concerned, not least of all the children.*"

20. The test at the time and set out in the skeleton argument in 2013 was whether the appellant had 'any ties' to Pakistan.

21. Previously with respect to Paragraph 399A the Rules made reference to

> '*has no ties (including social cultural or family) with the country to which he would have to go'*.

**Ogundimu** nonetheless found the test imported:-

> "*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 the relevant circumstances and is not to be limited to 'social, cultural and family circumstances*".

However, the test has altered since the case of **Ogundimu**. The test with reference to Paragraph 399A (c), and which corresponds with Section 117C, now refers to an entirely different test from 'any ties' as before and refers to

> '*very significant obstacles to his integration into the country which it is proposed he is deported'*

22. It is now incumbent on an appellant to show that there would be "*very significant obstacles*" to his integration into Pakistan. As set out in **Bossade** the test has indeed changed and paragraph 399A no longer looks at 'ties' per se but at the even more inclusive notion of integration and obstacles thereto specifically those in the UK in addition to those abroad. Paragraph 5 of the head note of **Bossade** sheds light on the new test confirming that:

> "*New paragraph 399A of the Immigration Rules remains similar to the old in considering the foreign criminal deportee's situation both in the UK and in the country of return. However, so far as concerns focus on a person's situation in the UK, time in the UK is no longer relevant as such except in the context of lawful residence (399A(a)) and paragraph* ***399A(b) introduces new criteria that relate to social and cultural integration in the UK. So far as concerns focus on the situation in the country of return, paragraph 399A no longer looks at***

> ***'ties' per se but at the more inclusive notion of integration and obstacles thereto. By requiring focus on integration both in relation to a person's circumstances in the UK as well as in the country of return, the new Rules achieve a much more holistic assessment of an appellant's circumstances.*** *Thereby they bring themselves closer to Strasbourg jurisprudence on Article 8 in expulsion cases which has always seen consideration of both dimensions as requiring a wide-ranging assessment: see e.g. Jeunesse v Netherlands (GC) App.No. 12738/10, 31 October 2014, paragraphs 106-109."*

23. The court in **Kamara** confirmed that the concept of integration was considered '*a broad one*' and not confined to the mere ability to find a job or to sustain life while living in the other country. At paragraph 14 the court found

> *'The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.*

24. The assessment is fact specific and on the facts of that case, which can be distinguished from the facts here, the court found it was open to the Upper Tribunal to find the appellant could not be integrated into the country to which he was to be deported. The court in **Kamara** at paragraph 12, noting the burden was on the appellant and the threshold was high, considered that the important question was whether there would be very significant obstacles, to the appellant's integration into a country which he had left at the age of 4 years where he had no contact with his natural mother:-

> "*For the purposes of this appeal, therefore, the important question was whether there would be very significant obstacles to Mr Kamara's integration into Sierra Leone, if deported there. The Upper Tribunal found that there would be. It reasoned as follows:*
>
> *i) the burden was on Mr Kamara to demonstrate that there would be very significant obstacles to his integration there, and the use of the word 'very' showed that the threshold was a high one ([66]);*
>
> *ii) it had found that Mr Kamara had no family, familial links or friends in Sierra Leone and Mr Kandola, who represented the Secretary of State at the hearing, accepted that these findings would be evidence to show that there were very significant obstacles to his integration, and 'he did not advance any further submissions as to the evidence or any other factors relevant to this requirement' ([67]: that is to say, the entirety of the*

*Secretary of State's case on this requirement turned on her submissions on the factual dispute which the Tribunal had to resolve as to whether Mr Kamara did or did not have family ties in Sierra Leone);*

*iii) nonetheless, the Tribunal considered at paras. [68]-[70] whether, notwithstanding the lack of relatives in Sierra Leone, there might be other relevant factors such as social or cultural ties of a nature which would provide him with the basis for establishing a private life and thus integration in that country; it reminded itself 'that there are many migrants who seek a new life in countries other than their own'. The Tribunal found that there were no such factors. Although English is an officially recognised language in Sierra Leone, it is primarily used only for business, government and media purposes, rather than normal day-to-day life. Mr Kamara did not speak any of the local languages, of which there were 23, being languages of the many tribes who live there. Moreover, the Tribunal found that 'Sierra Leone is a highly contextualised society, many things in the language are not expressed, instead interpreted through non-verbal cues or cultural norms', with which Mr Kamara would have no familiarity. The Tribunal found that there was no evidence that he would be able to integrate in Sierra Leone within that kind of cultural context.*

*iv) in addition, the Tribunal attached some weight to the fact that the evidence showed that there were continuing hardships experienced by the population in Sierra Leone in relation to the country's fight against Ebola, which would make it still more difficult for an outsider like Mr Kamara, 'with no social, cultural or familial links with the country', to integrate there.*"

25. The approach to deportations is clearly set out in **Hesham Ali (Iraq) v Secretary of State for the Home Department [2016] UKSC 60**:-

"*A proper understanding of the role of the appellate immigration authority, on an appeal from a decision to refuse leave is, as Lord Reed has pointed out (in paras 42-43), vital to an appreciation of how it is to perform its function. It is not a reviewing body. It is not inhibited by findings previously made.* ***On the contrary, it is its duty to find facts for itself and these must include, where relevant, circumstances which have arisen since the original findings were made.*** *For this reason, although the Upper Tribunal in the present case was bound to take account of the Secretary of State's reasons for making a deportation order, that was only because these were relevant considerations to which appropriate weight should be given. The fact that the Secretary of State had decided to make a deportation order has no significance for the Upper Tribunal beyond that.*"

26. **Hesham Ali** [159] emphasises the need for analysis of the particular facts and circumstances of the case and a distinction was to be made between migrants admitted temporarily to the United Kingdom and persons who hold permanent residence who have resided in this country for a substantial period of time, for example children who have lived in this country all or most of their lives – as indeed in this case.

27. As there is now a *more broad* and holistically evaluative test, it is all the more important that a relevant fact should be included and as set out in **Singh v SSHD [2015] EWCA Civ 74.**

28. Was the reference to 'no ties' a previous finding in the First-tier Tribunal decision of 2013 and a starting point and was it a relevant omitted fact?

29. I set out the guidance in **Devaseelan [2002] UKIAT 00702** paragraphs 39 to 41

> *39. In our view the second Adjudicator should treat matters in the following way.*
>
> *(1) **The first Adjudicator's determination should always be the starting-point**. It is the authoritative assessment of the appellant's status at the time was made. In principle issues such as whether the appellant was properly represented or whether he gave evidence, are irrelevant to this.*
>
> *(2) **Facts happening since the first Adjudicator's determination can always be taken into account by the second Adjudicator.** If those facts lead the second Adjudicator to the conclusion that, at the date of his determination and on the material before him, the appellant makes his case, so be it. The previous decision, on the material before the first Adjudicator and at that date, is not inconsistent.*
>
> *(3) **Facts happening before the first Adjudicator's determination but having no relevance to the issues before him can always be taken into account by the second Adjudicator**. The first Adjudicator will not have been concerned with such facts, and his determination is not an assessment of them.*
>
> *40. We now pass to matters that could have been before the first Adjudicator but were not.*
>
> *(4) **Facts personal to the appellant that were not brought to the attention of the first Adjudicator, although they were relevant to the issues before him, should be treated by the second Adjudicator with the greatest circumspection**. An appellant who seeks, in a later appeal, to add to the available facts in an effort to obtain a more favourable outcome is properly*

*regarded with suspicion from the point of view of credibility. (Although considerations of credibility will not be relevant in cases where the existence of the additional fact is beyond dispute). It must also be borne in mind that the first Adjudicator's determination was made at a time close to the events alleged and in terms of both fact-finding and general credibility assessment would tend to have the advantage. For this reason, the addiction of such facts should not usually lead to any reconsideration of the conclusions reached by the first Adjudicator.*

*(5)* ***Evidence of other facts – for example country evidence may not suffer from the same concerns as to credibility, but should be treated with caution****. The reason is different from that in (4). Evidence dating from before the determination of the first Adjudicator might well have been relevant if it had been tendered to him: but it was not, and he made his determination without it. The situation in the appellant's own country at the time of that determination is very unlikely to be relevant in deciding whether the appellant's removal at the time of the second Adjudicator's determination would breach his human rights. Those representing the appellant would be better advised to assemble up-to-date evidence than to rely on material that is (ex hypothesi) now rather dated.*

*41. The final major category of case is where the appellant claims that his removal would breach Article 3 for the same reason that he claimed to be a refugee.*

*(6)* ***If before the second Adjudicator the appellant relies on facts are not materially different from those put to the first Adjudicator****, and proposes to support the claim is in essence the same evidence as that available to the appellant at that tine, the* ***second Adjudicator should regard the issues as settled by the first Adjudicator's determination and make his findings in line with that determination*** *rather than allowing the matter to be re-litigated. We draw attention to the phrase 'the same evidence as that available to the appellant at the time of the first determination. We have chosen this phrase not only in order to accommodate guidelines (4) and (5) above, but also because, in respect of evidence that was available to the appellant, he must be taken to have made his choices about hot it would be presented. An appellant cannot be expected to present evidence of which he has no knowledge: but if (for example) he chooses not to give oral evidence in his first appeal, that does not mean that the issues or the available evidence in the second appeal are rendered any different by his proposal to give oral evidence (of the same facts) on this occasion.*"

30. It is clear that at paragraph 56 in the decision under challenge, the judge resisted the implication that the previous Tribunal agreed a finding that the appellant did not have 'any ties' to Pakistan and ruled in his favour on this basis. Indeed as Mr Tufan argued that case had been decided on different grounds. At paragraph 56 Judge Pooler noted that

> *'Mr Ansari submitted that in 2013 the First-tier Tribunal Judge considered the test whether the appellant had 'any ties' to Pakistan and ruled in his favour. It is, with respect difficult to see that this is the conclusion which the Tribunal reached. There appears to be no specific findings on this question. I have set out above the Tribunal's findings which do not refer to the issue of ties in Pakistan'*.

31. It is correct as recorded that the 2013 decision of the Tribunal did *not* set out specifically reference to 'ties'. There was reference to a skeleton argument but, in my view, the decision cannot be read with the extraneous document such that a definite finding is made by way of a skeleton argument. It is not as if a published document were relied on. It is not possible by way reading the decision of 2013 in itself to establish definitively the Tribunal's view on ties.

32. Even if that is not accepted, it was open to the judge to depart from those findings and to view the material afresh before her. Paragraph 39(2) of **Devaseelan** identifies that facts occurring since the first Adjudicator's determination can always be taken into account by the second Adjudicator and they may have the effect of recasting the evidence and findings. To my mind, the judge did not ignore the findings of the previous decision because of the use by the judge of the phrase *'in any event*' in paragraph 57. Being aware of the previous judgment, the referenced skeleton argument and the argument on 'ties' in Pakistan, Judge Pooler proceeded at paragraph 57, nevertheless, to consider the current evidence before him/her stating:-

> "*57. **In any event**, the issue for the Tribunal at present time is whether there would be very significant obstacles to integration and must be decided on the evidence now before me. The appellant has members of his extended family including his parents-in-law (who are his aunt and uncle) and their children (his cousins) who live in a house which is also occupied by other relatives in the extended family. There was no cogent evidence to indicate that he would be unable to access accommodation in Pakistan. The appellant is familiar with Urdu and although he cannot read or write the language, I heard nothing to indicate that this would place him in any difficulty in terms of integration. It is true that the appellant has spent very little time in Pakistan but nevertheless, viewing the various factors cumulatively, I am not persuaded that there would be very significant obstacles to his integration.*"

33. Thus even if, as it appears, the judge accepted the finding of the previous Tribunal that there were 'no ties', the judge made, as he/she was required to do a holistic assessment of the evidence in line with **Bossade**.

34. As set out in **Kamara** the burden of showing 'no ties' rests with the appellant and the threshold is high as indicated by the use of the words 'very'. The judge made their own assessment as to whether the appellant retained ties and concluded, albeit recognising that the appellant had spent very little time in Pakistan, there were no very significant obstacles to his return. I would add that being someone indistinguishable from a British citizen albeit that they are not British does not mean that they cannot have ties to Pakistan. As at the date of the hearing the judge did not just make fresh findings on old evidence without acknowledging the previous findings but explained that there was '*no cogent evidence to indicate that he would be unable to access accommodation in Pakistan'*. Unlike the appellant in **Kamara**, the judge clearly found he had relatives in Pakistan

35. The grounds advanced a lack of reference to the wife's evidence regarding the cramped nature of the accommodation but the position on the accommodation had changed from the previous decision as the wife and children had been granted discretionary leave to remain in the United Kingdom (rather than return to Pakistan with the appellant). Indeed the judge found that the best interests of the children, as British citizens, [61] were to stay living with the mother and grandmother in the UK and not in a family unit with the father at the present time [63] and indeed is obliged to consider the facts as at the date of the hearing. The judge proceeded to make separate findings in relation to the accommodation and as such cannot be fixed with the observation that he/she failed to consider any ties.

36. The judge also recorded the concerns of social services that the wife had been placed under pressure in relation to her evidence and noted at [52] that the appellant had remained away from his children for a number of years either in detention because of expressed concerns of Social Services. The judge viewed the factors cumulatively with regards integration, as she was bound to do, taking into account the appellant's long residence in the United Kingdom, but found there were no very significant obstacles to his integration in Pakistan. On the cogent reasoning given by the judge that finding was open to him.

37. I consider there is no material error of law in relation to ground (i).

38. In relation to grounds (ii) to (iv) as set out above, there is no merit in the arguments regarding the weight to be attached to the reports in respect of the relationship with the children. It is a matter for the judge as to the weight to be accorded to the reports and which were clearly taken into account and sound reasons were given for the findings. The judge found Dr Willemsen to have expressed a professional opinion.

39. The judge rejected the concept of the appellant co-operating or attending courses in relation to anger management because the appellant expressed so little insight into the concerns as expressed by the professionals [40]. The report of Dr Cohen was considered dated [28] as it was composed in 2011 '*six years before the hearing before me in the context of the proposed removal of the appellant, his wife and their children*', whilst the report from Dr Willemsen was found to date from early 2017. As such the judge was entitled to prefer the report of Dr Willemsen.

40. It was also open to the judge to reject the assertion that less weight should be attached to Dr Willemsen's report on the basis that the appellant was not legally represented. Indeed, as recorded, it was the appellant himself who had supplied the information which led to the contradictions in the report [32]. Rather, credence was placed on the report on the basis that Dr Willemsen was well accustomed and experienced in undertaking psychological assessments [33]. Further, a letter of a social worker dated 3rd April 2017 and cited by the judge, echoed the concerns and opinions raised by Dr Willemsen (complete lack of insight of the appellant and acknowledgement of the concerns [domestic abuse]). It was those findings which led to the judge's view of the appellant's 'willingness to co-operate with Social Services or to attend courses in relation to anger management'. The grounds in this respect are effectively a mischaracterisation of the decision.

41. In relation to ground (v) the judge noted that the appellant's wife applied on 3rd July 2014, subsequent to the previous decision, for leave to remain on the basis of domestic violence. Although the judge referred to her having been granted leave as a victim of domestic violence – in fact she was said to have been granted discretionary leave – it was not argued that her application was not made on that basis or that it would not have been a factor even if discretionary leave only was granted. It was the *application for that leave* which was relevant, rather than the grant actually given of discretionary leave, and the extensive involvement of social services. There was no error in this conclusion by the judge.

42. Overall the judge did consider the relevant facts and circumstances, heeded the previous decisions but found that

> *'there are significant factors which weigh in favour of the respondent's position. These include the appellant's history over some seventeen years of persistent offending. His offences have included serious violence leading to a prison sentence of three years and convictions for domestic violence against his wife as a result of which she applied for (and was granted) leave as a victim of domestic violence'*.

43. As such I consider there is no material error of law in the decision of First-tier Tribunal Judge Pooler and the decision shall stand.

44. No anonymity direction is made.

Signed Helen Rimington Date 4th September 2017

Upper Tribunal Judge Rimington