Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01720/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 2 October 2019	**On 23 October 2019**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

M. K.
(ANONYMITY DIRECTION CONFIRMED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. B. Bedford, Counsel, instructed by Farani Taylor Solicitors
For the Respondent: Miss. R. Bassi, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge I. M. Scott ('the Judge'), issued on 28 June 2019, by which the appellant's appeal against a decision of the respondent to refuse to grant him international protection was dismissed.

2. First-tier Tribunal Judge Ford intended to grant permission on one narrow ground, as explained in her reasons which I address below. However, permission was stated as 'granted' in the Tribunal's standard document and there were no words of limitation upon such grant. The appellant therefore enjoys permission to appeal on all issues: *Safi and others (permission to appeal decisions)* [2018] UKUT 00388 (IAC); [2019] Imm. A.R. 437.

Anonymity

3. The Judge issued an anonymity direction. The parties did not request that the order be set-aside and I confirm the direction accordingly:

> 'Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim being publicly known.'

Background

4. The appellant is a national of India who hails from the State of Harayana, which is located in the north of the country and surrounds the capital, New Delhi. He worked as an engineer before travelling to this country.

5. He met his ex-wife in February 2006 and the relationship commenced in July 2006. After her family found out about the relationship, they began to threaten him. Her father is a police officer and the appellant began to receive threatening telephone calls from the police station at which he worked. The appellant was required to attend the police station and was beaten by several police officers, including his ex-wife's father. The couple were kept separated and unable to talk to each other for some weeks, but they then managed to make arrangements to meet again. His ex-wife commenced a nursing course and was able to live away from home and so they were able to rent a room and live together. In 2007 the appellant was disowned by his family who were against the relationship because they belong to the Hindu Brahmin caste, whilst his ex-wife is Sikh. His ex-wife became pregnant and her family sought to persuade her that she undergo an abortion. She refused

to do so, stating that she would kill herself if forced to abort her child. Having confirmed her position, her family insisted that the couple marry and then leave the country immediately, for reasons of honour, as the baby would be born within nine months of the marriage. The couple were married in April 2010. Unfortunately, the child was lost before birth.

6. The appellant arrived in the United Kingdom on 23 January 2012 as a Tier 4 (General) Student. His ex-wife had arrived a month earlier but did not meet him at the airport. The appellant found out that she was having an affair and soon after his arrival he moved out of their accommodation. The appellant attempted suicide in July 2012 by cutting his neck and wrists. He had previously suffered mental health problems whilst in India. After his suicide attempt, he returned to India in July 2012 but had no contact with his family. His relationship with his ex-wife come to an end. With the support of her family she demanded 1.5 million rupees. He was able to pay half of this sum but continued to receive threats in relation to the remaining balance. He received the last threat in 2013. He cannot pay the outstanding sum. He travelled back to this country on 4 December 2012.

7. In the meantime, the appellant's second wife entered this country in April 2011 as a Tier 4 student. They met in January 2013 and the relationship began soon afterwards. They conducted a religious marriage in March 2013 and have lived together since this time. The couple have a child who is now four years old. He has a speech and language problem for which he is receiving therapy. At the date of the hearing before the First-tier Tribunal the appellant's wife was expecting their second child.

8. The family of the appellant's second wife are angry about the marriage because he has not divorced from his ex-wife and they are from different castes, Sikh Minhas. Members of her family approached the appellant's brother in India, and he was required to establish that the appellant's family had disowned him. They have reported to a friend of the appellant that they will kill him if he returns to India. They live in the Punjab, some 200 miles from the appellant's family home.

9. The appellant sought asylum on 18 June 2016 and was interviewed. The respondent refused the asylum application by way of a decision dated 20 January 2018.

Hearing before the FtT

10. The appeal came before the Judge sitting at Taylor House on 7 March 2019. The Judge found both the appellant and his wife to be credible as to their evidence. As to the application for international protection, the Judge determined that the appellant was unable to establish that he is a member of a particular social group, at [53] and [54]:

> *'It was not suggested that any of those persons whom the appellant fears who wish to do him harm would be motivated to do so for reasons of race, religion, nationality, or political opinion.*
>
> *As regards the remaining Convention reasons, membership of a particular social group, the appellant belongs to the Brahmin caste and has twice married Sikh women from lower castes. While that has not been well-received by his own family or by the families of his wives, there is no evidence that persons in his situation are perceived or treated differently by society and/or the law in India. That being so, I conclude that the appellant is not a member of a particular social group for the purpose of the Refugee Convention.'*

11. In refusing the appeal on humanitarian protection grounds, the Judge accepted that the appellant had established that substantial grounds existed as to his facing a real risk of suffering serious harm if he were to be returned to his home area in India, finding at [57]:

> *'Threats of harm have been made against him and there have been two instances of physical assault on him, once when he was beaten by his ex-wife's father and other police officers in a local police station, and once when he was attacked in a market in October 2012 by his ex-wife's uncle and four other men. Although those incidents happened some years ago, it is reasonably likely that the animosity which gave rise to them still endures, connected as it is with matters of family honour.'*

12. The Judge proceeded to find that 'the appellant could safely relocate to another part of India, which is a vast and populous country, and that it would be reasonable to expect him to do so', reasoning at [59]:

> '*In relation to finding a safe place in which to relocate, the background country information indicates that there is in general a sufficiency of protection in India, in terms of a system of criminal law which the authorities are able and willing to operate and from which the appellant would not be excluded. Although his ex-wife's father is in the police and it was he and other police officers who first beat the appellant, the background information shows that each state and union territory in India has its own, separate, police force. The evidence and the conclusions of the Upper Tribunal in* MD (same-sex oriented males: risk) India CG [2014] UKUT 00065 (IAC) *also indicate that there would be very little chance of the appellant being located elsewhere in India by any of those who might wish to do him harm. Although it appears that his return to India in July 2012 was detected by his ex-wife's uncle, there are many other international airports in India and the evidence (as already noted) is that there would be little chance of his arrival elsewhere being discovered. The absence of a central registration system was noted by the Upper Tribunal in* MD (India). *For the same reason, the need to obtain a registration card for*

access to public services, etc. is very unlikely to lead to the appellant's return being noticed.'

13. The Judge further determined that the appellant could access mental health care in India and even if he were to require more specialised psychiatric services in the future, it not having been established that he requires such services at this time, it was open to him to seek them by relocating to a major city or travelling there from wherever he might be residing, such areas being situated away from his home area.

Ground of appeal

14. Unfortunately, the grounds of appeal are not numbered, and it has proven difficult on occasion to identify when one ground has concluded and the next commences. JFtT Ford summarised the grounds as:

'It is argued that the Tribunal erred in finding that the appellant would not be at real risk of being traced by family members and/or his present in-laws through a central registration system in India and in finding that he and his wife had a viable internal relocation option. It is not arguable that the Tribunal erred in its understanding of country guidance (see section (e) of the headnote and paragraph 156 in the country guidance case of MD (India) CG [2014] UKUT 65 (IAC). The point made in that case was that there was insufficient evidence to show that individuals were traceable through a central registration system. The appellant did not produce additional evidence to persuade the Tribunal otherwise.'

15. Having considered the grounds of appeal, JFtT Ford reasoned:

'The grounds are not arguable with one exception. The Tribunal apparently accepted that the appellant had an uncle in India who worked for Immigration and who traced him when he last returned in 2012 (see paragraph 28). The appellant was found credible in his account. The only arguable material error of law is the absence of any assessment of the risk of his uncle similarly tracing him again on his return to India.'

16. No rule 24 response was filed by the respondent.

Decision on error of law

17. The appellant's primary criticism is that the Judge considered himself bound by the conclusion of the Upper Tribunal in *MD (India)*, at [154]:

'There is very limited evidence before us of families successfully using the police in an attempt to track down those family members who have fled, with a view to those persons being 'repatriated' back to the family. In any event, India is a country of 1.2 billion people and we have not been drawn to any evidence

> *that there is a central registration system in place which would enable the police to check the whereabouts of inhabitants in their own state, let alone in any of the other states or unions within the country. We consider the possibility of the police, or any other person or body, being able to locate, at the behest of an individual's family, a person who has fled to another state or union in India, to be remote.'*

18. It is asserted by the appellant that this conclusion formed no part of the relevant country guidance and the Upper Tribunal's attention was not drawn to evidence of a central registration system 'which persons including the police could use to trace the whereabouts of others.'

19. The paragraph of the country guidance decision considered by the Judge is the Upper Tribunal's conclusion as to the risk to persons from family members, or non-state agents, upon return to India. Whilst undertaken in the context of an assessment of LGBTQ+ failed asylum seekers returning to India, the objective evidence assessed enjoyed a wide nature and so the conclusion could reasonably be relied upon by the Judge in the context of this appeal.

20. As confirmed by Mr. Bedford at the hearing before me, the true thrust of this complaint, and another related one identified within the grounds as to a risk arising from the requirement to possess a registration card, is the existence of the Aadhaar ID system in India and the purported possibility of a public official to access information held under the system for persecutory reasons by using it to track someone down, wherever they live in India. The grounds seek to rely upon the following finding of the Judge, at [59], that there is '*the need to obtain a registration card for access to public services*.' The Aadhaar system, described as a 'registration system', has been promoted by the Indian central government. It is a 12-digit unique identity number that may be obtained voluntarily by residents of India, based on their biometric and demographic data. The data is collected by the Unique Identification Authority of India (UIDAI), a statutory authority established under the jurisdiction of the Ministry of Electronics and Information Technology.

21. It is a concern that this issue was raised before the First-tier Tribunal, and relied upon in the grounds of appeal to this Tribunal, without any clear reference to the lawfulness of the system, and attendant data security concerns, having been considered by a Constitution bench of the Supreme Court of India. A Constitution bench consists of at least five judges of the Court that sit to decide any case 'involving a substantial question of law' as to the interpretation of the Constitution of India or for the purpose of hearing any reference made by the President of India under article 143 of the Constitution. Several orders and judgments concerned with specific issues falling for consideration within the claim may be given by the Court and in this matter an order of 25 March 2014 (a bar upon sharing information to third parties without consent of registered person), a judgment of

24 August 2017 (privacy) and a judgment of 26 September 2018 (legality of the Aadhaar system) are relevant when considering the issue raised by the appellant. Legal representatives are to be mindful that sufficient care is to be undertaken to ensure that all relevant evidence is provided to a Tribunal when a novel, or core, issue is raised and relied upon.

22. A Constitutional bench considered several interrelated aspects of the Aadhaar system in *Puttaswamy v. Union of India*, No. 494 of 2012 & connected matters from 2012 to 2018. I understood at the hearing that Mr. Bedford was unaware of this lengthy civil claim and so gave him the options of having further time to consider this matter over the course of the morning or making an adjournment request. He asked that the Tribunal provide him with a summary of the Court's decision and having been provided with an outline confirmed that he was willing to proceed.

23. The nature of the Aadhaar system under consideration was summarised in simple terms in *Puttaswamy* (judgment of 26 September 2018), at [44}:

> *'In this whole process, any resident seeking to obtain an Aadhaar number is, in the first instance, required to submit her demographic information and biometric information at the time of enrolment. She, thus, parts with her photograph, fingerprint and iris scan at that stage by giving the same to the enrolling agency, which may be a private body/person. Likewise, every time when such Aadhaar holder intends to receive a subsidy, benefit or service and goes to specified/designated agency or person for that purpose, she would be giving her biometric information to that requesting entity, which, in turn, shall get the same authenticated from the Authority before providing a subsidy, benefit or service. Whenever request is received for authentication by the Authority, record of such a request is kept and stored in the CIDR* [Central Identities Data Repository]. *At the same time, provisions for protection of such information/data have been made, as indicated above. Aadhaar number can also be used for purposes other than stated in the Act i.e. purposes other than provided under Section 7 of the Act, as mentioned in Section 57 of the Act, which permit the State or any body corporate or person, pursuant to any law, for the time being in force, or any contract to this effect, to use the Aadhaar number for establishing the identity of an individual. It can be used as a proof of identity, like other identity proofs such as PAN card, ration card, driving licence, passport etc.'*

24. It is appropriate to observe the position of the UIDAI as presented to the Supreme Court in *Puttaswamy*, at [46]:

> *'They argue that in the first instance, minimal biometric information of the applicant, who intends to have Aadhaar number, is obtained which is also stored in CIDR for the purpose of authentication. Secondly, no other information is stored. It is emphasised that there is no data collection in respect*

> *of religion, caste, tribe, language records of entitlement, income or medical history of the applicant at the time of Aadhaar enrolment. Thirdly, the Authority also claimed that the entire Aadhaar enrolment eco- system is foolproof inasmuch as within few seconds of the biometrics having been collected by the enrolling agency, the said information gets transmitted the Authorities/CIDR, that too in an encrypted form, and goes out of the reach of the enrolling agency. Same is the situation at the time of authentication as biometric information does not remain with the requesting agency. Fourthly, while undertaking the authentication process, the Authority simply matches the biometrics and no other information is received or stored in respect of purpose, location or nature or transaction etc. Therefore, the question of profiling does not arise at all.'*

25. A five-judge panel of the Constitution bench of the Supreme Court ('th Court') upheld the validity of the Aadhaar system in *Puttaswamy,* finding that it is difficult for the authorities or others to launch surveillance upon citizens through the system. The Court further confirmed that no person would be denied benefits under social welfare schemes consequent to not participating in the system. The Court ruled that Section 57 of Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016 ('the Aadhaar Act') was unconstitutional, meaning that private entities cannot compel their customers to provide their Aadhaar number as a condition of service to verify their identity, specifically citing requiring it for bank accounts, school admissions, and mobile phone service as examples of unlawful use cases. The mandatory linking of Aadhaar with bank accounts did not satisfy the test of proportionality and so was unlawful. However, the Aadhaar number must still be quoted to file income tax returns and apply for a personal account number: see judgment of A.K. Sikri, J, on behalf of the majority, including the Chief Justice, at [447].

26. The Judge's finding that there is '*the need to obtain a registration card for access to public services*', relied upon by the appellant, was based upon a mistaken understanding of the facts caused by the failure of the appellant's representatives to place details of the Court's judgment before him.

27. The majority held at [447] that the architecture of Aadhaar as well as the provisions of the Aadhaar Act have not created a surveillance state, and this is ensured by the manner in which the project operates:

> '*During the enrolment process, minimal biometric data in the form of iris and fingerprints is collected. The authority does not collect purpose, location or details of transaction. Thus, it is purpose blind. The information collected, as aforesaid, remains in silos. Merging of silos is prohibited. The requesting agency is provided answer only in 'Yes' or 'No' about the authentication of the person concerned. The authentication process is not exposed to the internet world. Security measures, as per the provisions of section 29(3) read with*

> *section 38(g) [of the Aadhaar Act] as well as regulation 17(1)(d) of the Authentication Regulations, are strictly followed and adhered to.'* [447(1)(b)(i)]
>
> …
>
> '*After going through the Aadhaar structure, as demonstrated by the respondents in the powerpoint presentation from the provisions of the Aadhaar Actr and the machinery which the authority has created for data protection, we are of the view that it is very difficult to create profile of a person simply on the basis of biometric and demographic information stored in CIDR. Insofar as authentication is concerned, the respondents rightly pointed out that there are sufficient safeguard mechanisms. To recapitulate, it was specifically submitted that there was security technologies in place …, 24/7 security monitoring, data leak prevention, vulnerability management programme and independent audits … as well as the authority's defence mechanism …* [447(1)(c)]

28. The majority further held:

> '*Section 29* [of the Aadhaar Act] *in fact imposes a restriction on sharing information and is, therefore, valid as it protects the interests of the Aadhaar number holders. However, apprehension of the petitioners is that this provision entitles Government to share the information 'for the purposes of as may be specified by regulations.' The Aadhaar (Sharing of Information) Regulations 2016, as of now, do not contain any such provision. If a provision is made in the regulations which impinges on the privacy rights of the Aadhaar card holders that can always be challenged.'* [447(4)(d)]
>
> '*Section 33(1) of the Act prohibits disclosure of information, including identity information or authentication records, except when it is by an order of a court not inferior to that of a District Judge. We have held that the provision is to be read down with the clarification that an individual, whose information is sought to be released, shall be afforded an opportunity of hearing …'* [447(4)(f)]

29. It is appropriate to further observe that in its order of 25 March 2014, issued in the *Puttaswamy* constitutional case, the Court restrained the CIDR and the UIDAI from sharing the vast biometric database of Aadhaar with any third party or agency without the consent of the registered person.

30. Consequent to this order, a nine-judge panel of the Court handed down its August 2017 judgment where it ruled unanimously that privacy is a constitutionally protected right in India and though not an absolute right an interference must meet the threefold requirement of i) legality; (ii) the need for a legitimate aim; and (iii) proportionality. It confirmed that as information privacy is a facet of the right to privacy, the Government was required to put in place a robust regime for data

protection. By means of its September 2018 judgment, the Court was satisfied that there were sufficient security measures taken to protect data.

31. Mr. Bedford was reduced at the hearing to countering the careful considerations of the Supreme Court with the appellant's personal belief that there is such corruption in India that his ex-wife's police officer father and immigration officer uncle could secure access to the information held by competent authorities concerned with the Aadhaar system. Mr. Bedford observed that whilst it may be the law that no information could be provided to the police outside of a request to a judge or for national security reasons (de jure), the Tribunal was to accept that such information can be unlawfully secured (de facto). An example of such ability can be established by the ex-wife's uncle becoming aware that the appellant had travelled through New Delhi airport. As to this event, the uncle worked at the same airport as an immigration officer and the appellant was not able to confirm as to whether such knowledge came to him orally, through a legitimate search of computer systems or an unlawful search.

32. The Judge specifically addresses this issue simply, and cogently, at [59] by deciding that there are many other international airports in India to which the appellant could return and the evidence presented to the Tribunal established that there would be little chance of his arrival other than in New Delhi being discovered.

33. In the circumstances, the judgment of the Court in *Puttaswamy* confirms the approach adopted by the Tribunal in *MD (India)*, at [154] and the Judge did not err when relying upon the latter. It was reasonably and lawfully open to the Judge to conclude to the appropriate standard that an immigration officer situated at New Delhi airport or a police officer situated in Haryana would not have access to the relevant Aadhaar system databases so as to be able to track a person living elsewhere in India. This ground of appeal fails.

34. The appellant further challenges in general terms the approach taken to the burden of proof, at [5] and [6] of the grounds:

> '*Further, or alternatively, where evidence of serious ill-treatment in the past is accepted by the tribunal and the appellant has shown prima facie substantial ground for believing he would be exposed to a real risk of serious harm if returned, then in accordance with JK v. Sweden, 59166/12 (2017) 64 EHRR 15 the burden switches to the respondent to dispel the doubt with respect to the risk of a recurrence of past persecution. It follows in these premises that the respondent has the burden to dispel the doubt as to whether the appellant may be traceable via a registration system of which he complains and/or such system by which he was traced in the past.*

'The Court of Appeal in SSHD v. PF (Nigeria) [2019] EWCA Civ 1139 at paragraph 16(iv) confirms the Strasbourg Grand Chamber's guidance with regard to the switching of the burden of proof.'

35. The First-tier Tribunal's record of proceedings makes no reference to this point having been advanced of the appellant. Further, the skeleton argument filed on behalf of the appellant with the First-tier Tribunal was authored by another counsel some months before the hearing and the '*JK*' point was not identified within it. The point is not expressly addressed in the Judge's decision. Mr. Bedford informed me that he had raised the issue before the First-tier Tribunal and, though aware as to the lack of corroborative evidence as to this assertion, I was content to hear Mr. Bedford on this point.

36. When initially addressing this point of law, I had understood Mr. Bedford to be relying on article 4.5 of Directive 2004/83 ('the Qualification Directive'), as considered by the Court in *JK v Sweden* and it was this provision that was initially discussed at the hearing. Consequent to Mr. Bedford being referred to the Tribunal decision in *HKK (Article 3: burden/standard of proof) Afghanistan* [2018] UKUT 00386 (IAC); [2019] Imm. A.R. 373, he informed me that he was relying upon article 4.4 of the Directive and not article 4.5.

37. Article 4.5 details:

> 'Where Member States apply the principle according to which it is the duty of the applicant to substantiate the application for international protection and where aspects of the applicant's statements are not supported by documentary or other evidence, those aspects shall not need confirmation when the following conditions are met:
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> (a) the applicant has made a genuine effort to substantiate his application;
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> (b) all relevant elements at the applicant's disposal have been submitted, and a satisfactory explanation has been given regarding any lack of other relevant elements;
>
> (c) the applicant's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the applicant's case;
>
> (d) the applicant has applied for international protection at the earliest possible time, unless the applicant can demonstrate good reason for not having done so; and
>
> (e) the general credibility of the applicant has been established.'

38. Article 4.5 therefore provides that, where certain specified conditions are met, aspects of the statements of an applicant for international protection that are not supported by documentary or other evidence will not need confirmation

39. Article 4.4 establishes:

> 'The fact that an applicant has already been subject to persecution or serious harm or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.'

40. Article 4.4 is therefore an alleviating evidentiary rule where the applicant's previous experiences can reduce the need for a more extensive investigation and establishment of future risks. Article 4.5 is a general alleviating evidentiary rule in cases where the facultative rule of proof in article 4.1 is applied. In an appeal, an appellant's general credibility surfaces only in art. 4.5.e of the Directive, within the framework of a general alleviating evidentiary rule.

41. Read as a whole, article 4 comprises three distinct stages of an evidentiary procedure: i) a first stage where information is submitted; (ii) a second stage where the relevancy of information is assessed; and (iii) a third and final stage where the application is assessed, and a decision taken on the basis of this assessment. Article 4.4 is a procedural regulation falling within the third and final stage and along with paragraphs 3 and 5 contain norms regarding what shall be included in the decision makers' assessment, the presumption effects of any earlier persecution, and a qualified alleviating evidentiary rule.

42. Article 4.4 has been transposed domestically by paragraph 339K of the Immigration Rules. The Tribunal has confirmed that if a finding of past persecution has been made paragraph 339K requires a particular approach to adopted as to assessing the risk of repetition: *KB & AH (credibility-structured approach) Pakistan* [2017] UKUT 00491 (IAC). The alleviating evidentiary nature of the rule establishes a reduction in the need for more extensive investigation as to future risk by means of a presumption. Such approach is supported by the assessment of the Upper Tribunal in *HKK*, where it observed the Strasbourg Court judgments in in *RC v Sweden* (application 41827/07) unreported and *FG v Sweden* (application 43611/11) 41 B.H.R.C. 595 confirmed that that *JK v Sweden* introduced no new approach to the issue of the burden of proof in article 3 cases. The requirement of a government to dispel doubts where an applicant adduced evidence capable of proving that there were substantial grounds for believing expulsion would violate article 3, had been a feature of the Strasbourg Court jurisprudence for some considerable time.

43. The appellant relies upon the recent Court of Appeal judgment in PF (Nigeria) as confirming the Strasbourg Court's guidance as to the switching of the burden of proof, at [16 (iv)]:

> *'There is a switching burden of proof (see AM (Zimbabwe) at [16], and MM (Malawi) at [9(iv)]). As Sales LJ put it in AM (Zimbabwe) or:*
>
> > *"It is common ground that where a foreign national seeks to rely upon article 3 as an answer to an attempt by a state to remove him to another country, the overall legal burden is on him to show that article 3 would be infringed in his case by showing that that there are substantial grounds for believing that he would face a real risk of being subject to torture or to inhuman or degrading treatment in that other country: see, e.g., Soering v United Kingdom (1989) 11 EHRR 439 at [91], which is reflected in the formulations in Paposhvili at [173] and [183]…. In Paposhvili , at [186]-[187]…, the Grand Chamber of the ECtHR has given guidance how he may achieve that, by raising a prima facie case of infringement of article 3 which then casts an evidential burden onto the defending state which is seeking to expel him.'*

44. In Paposhvili v. Belgium (application no 41738/10) [2017] Imm. A.R. 867 the Grand Chamber held at [186] - [187}

> *'In the context of these procedures, it is for the applicants to adduce evidence capable of demonstrating that there are substantial grounds for believing that, if the measure complained of were to be implemented, they would be exposed to a real risk of being subjected to treatment contrary to Article 3 (see Saadi, cited above, § 129, and F.G. v. Sweden, cited above, § 120). In this connection it should be observed that a certain degree of speculation is inherent in the preventive purpose of Article 3 and that it is not a matter of requiring the persons concerned to provide clear proof of their claim that they would be exposed to proscribed treatment (see, in particular, Trabelsi v. Belgium, no. 140/10, § 130, ECHR 2014 (extracts)).*
>
> *'Where such evidence is adduced, it is for the authorities of the returning State, in the context of domestic procedures, to dispel any doubts raised by it (see Saadi, cited above, § 129, and F.G. v. Sweden, cited above, § 120). The risk alleged must be subjected to close scrutiny (see Saadi, cited above, § 128; Sufi and Elmi v. the United Kingdom, nos. 8319/07 and 11449/07, § 214, 28 June 2011; Hirsi Jamaa and Others, cited above, § 116; and Tarakhel, cited above, § 104) in the course of which the authorities in the returning State must consider the foreseeable consequences of removal for the individual concerned in the receiving State, in the light of the general situation there and the individual's personal circumstances (see Vilvarajah and Others, cited above, § 108; El-Masri, cited above, § 213; and Tarakhel, cited above, § 105). The assessment of the risk as defined above (see paragraphs 183-84) must therefore take into consideration general sources such as reports of the World Health*

Organisation or of reputable non-governmental organisations and the medical certificates concerning the person in question.

45. The recent decisions do not aid the appellant. They simply reconfirm the previous Strasbourg approach, as identified by the Tribunal in *HKK* and so re-state the long-standing position. They do not amend the legal position as to which party is required to satisfy the burden and standard of proof. The Judge's decision as to the burden of proof cannot be said to be unlawful.

46. In any event, for the reasons detailed above, the appellant cannot establish on the evidence before the Tribunal that it would be unreasonable for him to internally relocate in India in circumstances where his fears relate to non-state agents of persecution, namely family members of his ex-wife, or certain rogue agents of persecution who cannot through their professional employment track him outside of the State of Haryana or in New Delhi by means of his Aadhaar registration.

Notice of decision

47. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal is upheld.

48. An anonymity order is confirmed.

49. The appeal is dismissed.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 21 October 2019

TO THE RESPONDENT
FEE AWARD

The appeal is dismissed, and no fee award is payable.

Signed: D. O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 21 October 2019