**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/09493/2019

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 20 January 2020** | **On 6 March 2020** |

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**MR GURVINDER PAL SINGH**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Manjit Singh Gill QC, Counsel, instructed by Connaught Law
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 7 August 2019 of First-tier Tribunal Judge Minhas which refused the Article 8 ECHR appeal of the appellant.

Background

2. The appellant is a citizen of India born on 27 February 1985.

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3. The appellant came to the UK on 4 October 2004 with entry clearance as a student. He was granted a further period of leave until 4 October 2012. On 1 July 2011 he was convicted of obtaining leave to remain by deception and was sentenced to six months' imprisonment. Thereafter he has made four applications for leave to remain on Article 8 ECHR grounds.

4. On 23 March 2018 the appellant made a fifth application for leave on Article 8 ECHR grounds. The appellant's claim was based on his marriage on 5 October 2017 to Zahra Haider, a dual British and Pakistani national.

5. The respondent refused that application in a decision dated 16 May 2019. The respondent maintained that the appellant could not meet the suitability requirements set out in paragraph S-LTR.1.6. of the Immigration Rules because of his conviction for obtaining leave to remain by deception. The respondent also found that paragraph EX.1. was not met as there were no insurmountable obstacles to the couple establishing their family life outside the UK and that the refusal of leave was proportionate.

Decision of the First-tier Tribunal

6. The appellant appealed to the First-tier Tribunal and the appeal came before First-tier Tribunal Judge Minhas on 10 July 2019. The appellant maintained that paragraph S-LTR.1.6. of the Immigration Rules should not have been applied. He also submitted that there were insurmountable obstacles to his wife accompanying him to live in India. This was because of her dual Pakistani/British nationality and Muslim religion, the appellant being a Sikh. The appellant maintained that life in India would be very difficult for them as a result, relying also on a country expert report of Dr Livia Holden dated 7 June 2018 and a Country Policy and Information Note entitled "India: Religious Minorities" published in May 2018 (the CPIN). He also maintained that his wife had health problems, including moderately severe depression, arising from her very abusive first marriage. Further, he relied on the additional factor of his wife having to leave a job and a profitable business in the UK in which she employed three people. The appellant also maintained that, in an assessment of proportionality under Article 8 ECHR, outside the Immigration Rules, it was disproportionate to expect him to leave the UK. He relied also on the principle set out in the case of Chikwamba v SSHD [2008] UKHL 40, asserting that expecting him to leave the UK merely in order to seek entry clearance where it is accepted that he could otherwise meet the Immigration Rules was not proportionate.

7. The First-tier Tribunal found in paragraph 24 of the decision that the appellant did not present with a character or conduct that put him outside the suitability requirements of the Immigration Rules, concluding that paragraph S-LTR.1.6. of Appendix FM did not apply. That finding has not been challenged by way of a cross-appeal or in a Rule 24 response and stands.

8. In paragraph 26 of the decision the First-tier Tribunal went on to consider whether the appellant met paragraph EX.1. of Appendix FM of the Immigration Rules. The judge found as follows in paragraph 26:

> "The appellant relies upon the report of Dr Holden to evidence the difficulties he and his wife will face in both Pakistan and India. At a general level, I accept this evidence. I acknowledge it will be difficult, as does the respondent. However, the test I must consider is whether the difficulties they face will be so very significant that they cannot be overcome and will entail very serious hardship for the appellant and his wife. The respondent's position is that the appellant can continue his private life with his wife in India. The appellant is an Indian national. He has lived in India for the first nineteen years of his life. He has family in India with whom he is in contact. The appellant asserts he cannot return to his family in view of their disapproval of his marriage. Equally, the appellant asserts he cannot relocate to another part of India as the risks to his Pakistani Muslim wife will be the same from society in general. I find this assertion is not supported by the evidence in the appellant's bundle. The appellant's evidence is that his family considered he had shamed them, in their view the worst thing he could have done is marry a Muslim. Despite this, the appellant and his family remain in contact. This behaviour is not consistent with a totally unsupportive family. The appellant puts forward the report of Dr Holden to support his assertion that his wife is at risk in India. I have considered this document in detail. Dr Holden reports in depth in relation to visa and citizenship requirements and comments generally on the increased political tension between India and Pakistan. Her report does not assist me on the subject of the risks specifically to Pakistani Muslim females visiting or residing in India. I therefore attach little weight to the report in this regard. The legal opinions of Aakash Gupta and K Sehgal, advocates in India, in my view, both go beyond their expertise in commenting on the risks to Pakistani Muslim visitors to India. Neither advocate specifies how they reached their brief conclusions nor state any particular experience or qualification which equips them to comment on the risks of violence or otherwise to the appellant's wife in view of her background. Accordingly, I place little weight on their opinion to this issue. The respondent refers me to India: CPIN May 2018, in particular chapter 9 regarding interfaith marriages. The CPIN at paragraph 9.3 states *'While it isn't the norm for interfaith couples to be subject to violence, it does happen. The threat of violence would exist, in the vast majority of cases, from the families involved. Only in certain rural areas would individuals outside the family take an interest in an interfaith marriage and take any action. '*The CPIN continues at paragraph 9:3:1 *'There is a very stark difference between the treatment of interfaith couples in rural areas and urban areas. Whereas in urban areas, it is not uncommon for inter-religious marriages to take place, they are much more controversial in rural areas. ... In urban areas it would be more difficult to identify interfaith couples. Even where an interfaith couple is identified, it is not likely they would face serious hardship'.* At paragraph 9:5:1 the CPIN provides *'marriages between Hindus and Muslims would face the most opposition and, marriages where the woman is Muslim, were more 'problematic' than other inter-religious marriages'.* The CPIN does not address marriages between Sikhs and Muslims in India. I have had regard to all of the evidence before me. Based on the information within the CPIN, and in the absence of any other reliable evidence to suggest the appellant's wife will be targeted because of her background, I do not find the risk to the

> appellant's wife to amount to an insurmountable obstacle preventing the appellant and his wife continuing their private life outside of the United Kingdom. I concede that it may be more problematic than an interfaith marriage involving parties where neither is Muslim".

9. The First-tier Tribunal went on in paragraph 28 of the decision to consider whether the appellant's wife would be able to obtain Indian citizenship, finding even if that took many years that Ms Haider would be able to obtain visit visas. Towards the middle of that paragraph the judge stated "there is no evidence before me of dual nationality for the appellant's wife. The judge went on in paragraph 28 to state:

> "I have not been made aware of any difficulty with the appellant's wife providing evidence of the renunciation or cancellation of her Pakistan passport and applying for a visit visa as a British citizen. There is no evidence before me to suggest that a British citizen, even of Pakistani descent, will be unable to obtain a visit visa for India. Even if I accept the evidence that obtaining citizenship will take many years, the appellant's wife is able to obtain a visit visa. Accordingly, the appellant and his wife are able to continue their family life together outside the United Kingdom. I therefore find that there are no insurmountable obstacles to the appellant and his wife continuing their family life together outside of the United Kingdom in India".

10. In paragraph 29 of the decision the judge found that there were insurmountable obstacles to the couple exercising their family life in Pakistan, relying on the report of Dr Holden and a Country Policy and Information Note on interfaith marriage in Pakistan.

11. In paragraph 30 of the decision the First-tier Tribunal considered a psychological assessment prepared by Kevin O'Doherty, a specialist in mental health and psychological trauma. Mr O'Doherty commented on the physical and mental abuse experienced by Ms Haider in her first marriage and how this had had an "adverse psychological impact on her". He recorded her evidence that in the past she had taken overdoses of prescribed medication which had led to attendance at hospital. She continued to experience migraines and was seeing a neurologist. The appellant's bundle included confirmation of neurology appointments. However, whilst not questioning Mr O'Doherty's expertise or his conclusions on the health of the appellant's wife, the First-tier Tribunal placed little weight on the report as it was not disputed by the appellant that medical treatment would available to the appellant's wife in India.

12. In paragraph 31 the Tribunal considered Ms Haider's employment and business and in the UK, as follows:

> "31. The appellant's wife is employed in the United Kingdom. She also operates a business employing three others. Neither of these facts amount to an insurmountable obstacle preventing the appellant and his wife from continuing their family life together outside of the United Kingdom."

13. The judge concluded in paragraph 32 that the test of insurmountable obstacles was a "stringent" one and that it was not met here. She summarised her findings in paragraph 33:

> "The appellant has been in the UK since 2011 in breach of immigration rules. He remains an Indian national and lived in India for the first 19 years of his life. He is a qualified transport professional and able to work in India. He is supported by his wife and friends. The appellant's wife is able to obtain a visit visa and travel to India. The risks to them as an interfaith married couple can be mitigated by moving to an urban area. The appellant has not demonstrated to me that there would be very significant obstacles to his integration into India. I have no hesitation in concluding that the appellant would be able to re-establish a private life there within a relatively short period of time."

14. In paragraphs 35 to 50 of the decision the First-tier Tribunal conducted an assessment of proportionality outside of the Immigration Rules, finding that the refusal of leave was proportionate and that any temporary separation while the appellant applied for entry clearance to return was also proportionate.

Grounds of Appeal

15. The appellant's challenge to the finding that there were no insurmountable obstacles to continuing family life in India is contained in Grounds 4 and 5. Ground 4 argued that the First-tier Tribunal took an incorrect approach to the evidence on the difficulties that would arise from the appellant's wife no longer being able to operate her business and work in the UK were the couple to relocate to India and ignored her vulnerabilities arising from her history of domestic violence in her previous marriage. Those vulnerabilities were still relevant even if counselling, neurological treatment and other treatment was available in India. The wife's subjective fear of going to India had to be taken into account. Further, there was objective support for her fear of societal hostility towards those of Pakistani nationality or heritage and to interfaith marriages where one party was Muslim, set out in the report of Dr Holden, letters from Indian lawyers and the CPIN. Even if the couple did not require international protection the evidence on the difficulties they would face because of their particular profile was still capable of showing that there would be very significant difficulties for them in India.

16. Ground 5 set out a challenge to the approach taken by the First-tier Tribunal to the CPIN, maintaining that even if it did not comment specifically on an interfaith marriage between a Sikh man and a Muslim woman, the judge had to place some weight on the evidence of societal hostility towards interfaith marriages, particularly where the appellant's wife was a Pakistani national and a Muslim. Also, the First-tier Tribunal was incorrect to state in paragraph 26 that there was an "absence of any other reliable evidence" on difficulties for the appellant and his wife in India where the report of Dr Holden clearly identified such difficulties. The judge stated that Dr Holden's report was reliable "at a general level". It

was incorrect to go on to place no weight on Dr Holden's report only because "it did not assist me on the subject of risks specifically to Pakistani Muslim females visiting or residing in India" when it specifically addressed systemic discrimination and difficulties towards those of Pakistani nationality or heritage and towards those in interfaith marriages.

17. Ground 5 also submitted that the finding in paragraph 26 of the decision on the appellant's family not being "totally unsupportive" was not open to the judge. The appellant's evidence was consistent as to his family having nothing to do with him if he returned to India because of his inter-faith marriage. His evidence at the hearing that he remained in contact by telephone and that his mother remained of the view that he had brought shame on the family did not provide a basis for inferring any support on return. Ground 5 also maintained that the approach taken to the evidence of the two Indian lawyers was incorrect where they had provided qualifications showing that they were qualified lawyers and their evidence on the systemic difficulties faced by those of Pakistani nationality or heritage in the Indian immigration system was consistent with other evidence, for example the report of Dr Holden and the respondent's CPIN.

18. The appellant also maintained that the judge erred in proceeding on the basis set out in paragraph 28 of the decision, that the appellant's wife only had British citizenship and had renounced her Pakistani nationality. This had never been her evidence; see paragraph 8 of her witness statement. In any event, the evidence of Dr Holden was that even if the appellant's wife were to renounce her Pakistani nationality and retain only British nationality, her Pakistani heritage would still leave her facing difficulties when dealing with the authorities in India. Indeed, even the respondent's refusal letter recognised that it would be difficult for the appellant's wife to obtain a visa, stating "whilst it may be difficult and challenging to obtain the correct visa entry clearance for your wife to enter India, this does not amount to an insurmountable obstacle".

19. The grounds also maintained that even if any one of the factors relied upon by the appellant in and of itself did not amount to insurmountable obstacles, the First-tier Tribunal failed to approach this part of the assessment in a holistic and cumulative manner.

Decision on Error of Law

20. When considering whether the decision of the First-tier Tribunal disclosed a material error on a point of law concerning the assessment of whether there were insurmountable obstacles to family life being exercised outside the UK, I referred to the recent guidance provided by the Court of Appeal in the case of Lal v SSHD [2019] EWCA Civ 1925. In paragraph 35 of that decision the Court of Appeal gave its view as to the correct interpretation of insurmountable obstacles. The Court of Appeal indicated in paragraphs 36 and 37:

> "36. In applying this test, a logical approach is first of all to decide whether the alleged obstacle to continuing family life outside the UK amounts to a very significant difficulty. If it meets this threshold requirement, the next question is whether the difficulty is one which would make it impossible for the applicant and their partner to continue family life together outside the UK. If not, the decision-maker needs finally to consider whether, taking account of any steps which could reasonably be taken to avoid or mitigate the difficulty, it would nevertheless entail very serious hardship for the applicant or their partner (or both).
>
> 37. To apply the test in what Lord Reed in the *Agyarko* case at para 43 called 'a practical and realistic sense', it is relevant and necessary in addressing these questions to have regard to the particular characteristics and circumstances of the individual(s) concerned. Thus, in the present case where it was established by evidence to the satisfaction of the tribunal that the applicant's partner is particularly sensitive to heat, it was relevant for the tribunal to take this fact into account in assessing the level of difficulty which Mr Wilmshurst would face and the degree of hardship that would be entailed if he were required to move to India to continue his relationship. We do not accept, however, that an obstacle to the applicant's partner moving to India is shown to be insurmountable – in either of the ways contemplated by paragraph EX.2. – just by establishing that the individual concerned would perceive the difficulty as insurmountable and would in fact be deterred by it from relocating to India. The test cannot, in our view, reasonably be understood as subjective in that sense. To treat it as such would substantially dilute the intended stringency of the test and give an unfair and perverse advantage to an applicant whose partner is less resolute or committed to their relationship over one whose partner is ready to endure greater hardship to enable them to stay together".

21. In paragraph 41 of the decision the Court of Appeal pointed out that the question of the difficulties a person might face on relocation did not necessarily require objective confirmation by third party evidence, stating:

> "The question is one of fact and there is nothing wrong in principle with basing a finding about a person's sensitivity to heat on evidence given by the person concerned and members of their family, as the FtT judge did in this case, if such evidence is regarded as sufficiently compelling".

22. In paragraph 45 of Lal, the Court of Appeal also identified an assessment of whether there were insurmountable obstacles should not proceed "by considering the matters relied on separately from each other without also assessing their cumulative impact". In paragraph 46 the Court of Appeal concluded that the 70 year old British spouse's proven sensitivity to heat, the fact of his living all of his life in the UK, and his ties to friends and family including his four children and six grandchildren, left it open as to whether an assessment would lead to a finding that he would face insurmountable obstacles on relocation to India.

23. I found that the grounds challenging the assessment of whether the appellant and his wife would face insurmountable obstacles to establishing

their family life in India had merit. My reasons are essentially those set out in the appellant's Grounds 4 and 5 but, in particular, as follows.

24. Firstly, the evidence before the First-tier Tribunal was that the appellant's wife had dual Pakistani and British nationality and had not renounced her Pakistani nationality. The judge proceeded on an incorrect basis when stating otherwise in paragraph 28 of the decision and proceeding to distinguish Dr Holden's opinion on the difficulties the couple would face on the basis that she addressed the situation for a Pakistani national seeking to enter India. The report of Dr Holden and the respondent's refusal letter confirmed particular difficulties for a Pakistani national in entering and remaining in India and this factor required consideration.

25. Secondly, the judge indicated in paragraph 26 that she accepted Dr Holden's opinion "[a]t a general level". In paragraph 28 the judge appears to accept also that Dr Holden provided reliable, "in depth" evidence on Indian visa and citizenship requirements. In paragraph 29 the judge accepts Dr Holden's evidence at its highest and without question regarding the difficulties for the appellant and his wife in Pakistan. As found above, in paragraph 28 the judge was incorrect to decline to place weight on other aspects of Dr Holden's report because the appellant's wife is, in fact, a dual Pakistani/British national. Also, the statement in paragraph 28 that the appellant's wife was not a dual national is not easily reconciled with the criticism of Dr Holden's report in paragraph 26 which states that the report "does not assist me on the subject of the risks specifically to Pakistani Muslim females visiting or residing in India". Why would that be a reason for finding the report of little use if the appellant's wife was not a Pakistani national? As will be clear from the matters set out above, Dr Holden's report does provide evidence on such a situation, in any event.

26. It is my conclusion that the approach taken by the First-tier Tribunal to Dr Holden's evidence was not rational and amounted to a material error where the report at its highest was capable of leading to a different outcome as to whether the couple would face insurmountable obstacles to living in India.

27. Thirdly, the appellant's wife has a undisputed profile of being vulnerable as a result of the domestic violence she experienced in her first marriage. Her evidence was she has a subjective fear of going to India as a Pakistani Muslim woman who has mental health and physical problems. This was a factor that required consideration even if she would be able to obtain medical treatment in India. As set out above, there was, in any event, country evidence capable of providing objective support for her subjective concern that she would face systemic, adverse treatment in India because of her Pakistani nationality and Muslim religion.

28. Fourthly, the judge also erred in finding that the couple could expect some support from the appellant's family when his evidence had been consistent as to this not being the case.

29. Fifthly, the approach taken in the paragraphs set out above show that the judge approached the various factors relied upon by the appellant and his wife individually and not cumulatively as required by the guidance in Lal.

30. For these reasons, I found that the decision of the First-tier Tribunal on whether there were insurmountable obstacles to the couple establishing family life in India, disclosed a material error on a point of law such that it had to be set aside to be re-made. Where the findings under the Immigration Rules are a factor to be taken into account in the proportionality assessment that must be conducted outside the Immigration Rules, this also meant that the Article 8 proportionality assessment set out in paragraphs 35 onwards of the First-tier Tribunal had to be set aside to be re-made and it was not necessary to address in detail the other grounds challenging that part of the decision.

31. The parties were in agreement that were I to find an error of law I would be in a position to proceed to re-make the appeal without a further hearing. I therefore proceeded to re-make the appeal.

Decision Re-making the Appeal

32. The evidence of the appellant and his wife was, in the main, not disputed. The evidence was that the appellant will not be offered any support by his family on return to India because he has entered into a marriage with a Pakistani Muslim woman. The evidence on the treatment that a couple with their profile would face in India was generally consistent.

33. The report of Dr Holden and the CPIN show that they will face difficulties by way of discrimination and some hostility. The CPIN provides relevant evidence but was prepared as a tool for assessing protection claims and requires a little caution where the assessment to be made here is a holistic one as to whether there are insurmountable obstacles to family life being exercised in India. Section 7 of the CPIN describes a raised level of societal hostility towards Muslims in India. Paragraph 7.2.27 of the CPIN refers to discrimination against Muslims in the housing sector, stating:

> "… discrimination against Muslims (as well as Dalits) can at times be a barrier to access to housing. Private landlords, real estate brokers and property dealers will often refuse to rent to someone who is Muslim, or impose unfair conditions on them. The Special Rapporteur was informed that in some parts of the country, Muslims have felt compelled to leave their neighbourhoods and move to places where other Muslims are living, often in informal settlements."

34. The CPIN in paragraph 9.3.1 quotes an Immigration and Refugee Board of Canada (IRB) report stating that those in mixed marriages would not be likely to face serious hardship if they relocated to an urban area. Immediately after this, however, in the same paragraph, the CPIN sets out an extract from a Reuters report expressing a different view, that:

> "… inter-religious relationships are 'a taboo' both in rural areas and for "educated, well-off families in urban India".

35. The CPIN also states in paragraph 9.5.1:

> "In 2012, the IRB cited academic sources which noted that marriages between Hindus and Muslims would face the most opposition and, marriages where the woman is Muslim, were more 'problematic' than other inter-religious marriages"

36. Paragraph 9.5.2 states:

> "BBC News reported in March 2018:
>
> 'Marriages between Hindus and Muslims have long attracted censure in conservative Indian families, but the attachment of a deeper, sinister motive to them is a recent phenomenon."

37. The appellant also relies on the report of Dr Holden. Dr Holden sets out her duty to the Tribunal at the outset of the report. She sets out appropriate qualifications, experience and expertise for commenting on the difficulties that would be faced by the appellant and his wife in India because of the wife's Pakistani nationality, Muslim religion and the marriage being inter-faith. There was no submission from the respondent that she was not a reliable expert witness.

38. In paragraph 9 of her report, Dr Holden set out:

> "As per information on the United Kingdom foreign travel advice for India '[a]ll applicants of Pakistani origin who hold dual British-Pakistan nationality must apply for an Indian visa on their Pakistan passport. Those who have either renounced Pakistani nationality or cancelled their Pakistani passport would need to submit documentary proof of this'. Hence the wife of the Applicant will either need to provide documentary evidence of the renounciation (sic) or cancellation of her Pakistani passport or will be treated as a Pakistani applicant."

39. Referring back to the test from Lal, I am doubtful that having to renounce her Pakistani nationality is a reasonable step by way of mitigation that the appellant's wife could be expected to take in order to avoid serious difficulties in obtaining a visa for India. The respondent does not appear to have made a submission to this effect before the First-tier Tribunal and did not do so before me.

40. Paragraph 10 of Dr Holden's report sets out that a Pakistani national can apply for a three month visit visa, limited to a maximum of three cities on provision of, amongst other requirements, a sponsorship certificate signed by a particular official who can certify that they know the Indian sponsor. The appellant can be expected to be able to obtain that certificate after a period of time, if not immediately on return, given that he grew up and studied in India before coming to the UK. Dr Holden sets out, however, that, in addition, the Indian authorities require further documents from

Pakistan, including what would appear to be an ID card and a utility bill. Given her residence in the UK, I accept that Ms Haider cannot provide those documents and could not do so without relocating to Pakistan without her husband. As found by the First-tier Tribunal, her history in Pakistan is a difficult one and requiring her to go back now without her husband in order to obtain documents to support her application for a three month visit visa to go to India appears to me to be unreasonable.

41. In paragraph 11, Dr Holden sets out the additional requirements if the appellant's wife applied for a two-year multiple entry spouse visa valid for up to five places in India. The appellant's Indian passport would have to show a valid Pakistani visa or residence permit. The appellant does not have such a visa or permit. As before, it is not seriously argued here that the couple can be expected to go to Pakistan.

42. Dr Holden comments in paragraph 25 of her report on the deteriorating political relationship between India and Pakistan and the impact this would have on the appellant and his wife. She comments that:

> "Whenever relations worsen this has an adverse impact on citizens of the country that is perceived as enemy and this is the source of added difficulty and bureaucratic delays for Pakistan/Indian couples. This can have very serious consequences, which, in my experience, materialize in visa refusals and impossibility to travel or situations of illegality that cannot be imputed to the applicants."

43. Dr Holden's conclusion is that it would be "quite taxing" for the appellant and his wife to live together in India because of these various difficulties.

44. In paragraphs 32 and 33 of the report, Dr Holden comments on the likelihood of family disapproval of an interfaith marriage and I found that this, together with the information in the CPIN, supported the appellant's evidence of his family disowning him because of his marriage.

45. In paragraphs 34 to 43 of her report Dr Holden sets out her view of the position for inter-faith couples where there is family disapproval to the extent that honour killings can arise. I accept that the examples she sets out are at odds with some of the material in the CPIN which does not reflect a significant level of honour killings and provides some support for a couple being able to relocate to urban area. In the context of the evidence as a whole, it is my conclusion that the interfaith marriage of the appellant and his wife where Ms Haider is a Pakistani Muslim would not lead to physical violence but would be capable of giving rise to unpleasant discrimination on a day to day basis even in urban areas and that factor being more significant here given the context of Ms Haider's particular vulnerabilities which will make it harder for her to deal with such discrimination.

46. The appellant also relies on letters from two immigration lawyers in India, Mr Gupta (letter dated 27 June 2019 pages 180 to 184 of the appellant's bundle) and Mr Sehgal (letter dated 21 June 2019 at pages 185 to 188 of

the appellant's bundle). Mr Gupta comments on the societal and systemic prejudice against those of Pakistani nationality or heritage leading to delays or obstacles being put in the way of visa applications being considered, to difficulties in obtaining some form of settled status or Indian nationality to the non-Indian national being considered adversely, as an "enemy" of India. Mr Sehgal merely sets out the provisions of Indian law on obtaining Indian nationality showing that nationality provisions are more significantly more difficult for those with Pakistani (and Bangladeshi) backgrounds. His comment at the end of his report that Ms Haider will face "difficulties" in India as a woman of Pakistani heritage is somewhat general but consistent with the comments of Dr Holden. Mr Gupta's comments are also consistent with Dr Holden's evidence. Where these letters were generally consistent with the information in the CPIN and Dr Holden's report and where they addressed relatively uncontentious matters such as the visa requirements for those of Pakistani nationality or heritage, they appeared to me capable of carrying some weight.

47. My conclusion, from the information contained in the CPIN, Dr Holden's report and the letters from the Indian lawyers, is that the immigration system in India sets additional and onerous hurdles for appellant's wife because of her Pakistani nationality. A visit visa application requires documents which the appellant would not be able to obtain immediately upon return and such a visa would be strictly time and geographically limited. It is not reasonable for Ms Haider to have to return to Pakistan to obtain documents required for a visa for India. The couple do not appear to be in a position to obtain a spouse visa where the couple cannot provide the documents from Pakistan which are required by the Indian authorities. The adverse view of those of Pakistani nationality or heritage would be capable of leading to discrimination in the processing of visa applications and in the couple's dealings with the authorities generally. These obstacles appear to me to approach the threshold of a very significant difficulties albeit they do not make relocation impossible.

48. In addition, I must also take into account Ms Haider's particular background. The evidence on her vulnerability arising from abuse in her first marriage is not disputed. She has moderately severe depression and suffers from migraines. There is no argument as to there being medical treatment available for her in India but I am satisfied that she is a vulnerable person who will find relocation to India more difficult as a result. She has a subjective fear of discrimination because of her Pakistani background and being in an interfaith marriage, the country evidence before me certainly supporting her concerns on the former and also on the latter, albeit to a lesser extent. In addition to her personal vulnerabilities, Ms Haider is employed in the UK and employs three others in her own business. Having to leave her job and give up her business in order to go to India are not factors which could amount to an insurmountable obstacles but they are not wholly negligible either and add some weight to the appellant's case that the couple should not be required to go to India.

49. It is my conclusion that the particular factors here, taken cumulatively, show that the appellant and his wife will face "very significant difficulty" in relocating to India, that there are not steps that they can reasonably take to mitigate that difficulty and that the "very serious hardship" that they would face shows that the test of insurmountable obstacles is met. I reach that conclusion not solely because the wife's Pakistani background, her Muslim faith or because the marriage is inter-faith or because of Ms Haider's vulnerability or her employment and business interests in the UK but because of the particular combination of those factors here.

50. The appellant has therefore shown that he meets the provisions of Appendix FM of the Immigration Rules and the Article 8 ECHR appeal is allowed on that basis.

**Notice of Decision**

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be re-made.

The appeal is allowed under Article 8 ECHR where the provisions of Appendix FM are met.

Signed:  Date: 5 March 2020

Upper Tribunal Judge Pitt