**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/14181/2017

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 13 January 2020** | **On 21 January 2020** |

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**A S**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. 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, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant's wife and minor children from serious harm, having regard to the interests of justice and the principle of proportionality.**

**Representation:**
For the Appellant: Mr D Bazini, Counsel, instructed by JJ Law Chambers
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

## REMAKE DECISION AND REASONS

### Introduction

1. This is the remaking of the decision in this appeal following my error of law decision, promulgated on 15 October 2019, in which I set aside the decision of the First-tier Tribunal, having found that it contained material errors of law.

2. Although it was the Secretary of State who brought the appeal to the Upper Tribunal, now that I have set aside the decision of the First-tier Tribunal, the appeal is once more that of A S. Therefore, I shall refer to him as the Appellant and to the Secretary of State as the Respondent.

3. The Appellant, a national of Pakistan born in 1973, had originally appealed to the First-tier Tribunal against the Respondent's decision of 19 October 2017, refusing his human rights claim. That claim arose from deportation proceedings initiated by the Respondent following the Appellant's conviction on 13 November 2015 for causing actual bodily harm to his wife. He was sentenced to a period of 2 years' and 9 months' imprisonment. A restraining order was also imposed. This triggered the provisions of the UK Borders Act 2007, which required Respondent to make a Deportation Order against the Appellant by virtue of section 32(5).

4. The essence of the Appellant's case in resisting deportation on Article 8 ECHR grounds has always rested upon the assertion that he has strong ties in the United Kingdom, established since his lawful arrival at the age of 6 years in 1979, and has no connections whatsoever with Pakistan, whether in respect of familial, social, cultural, religious, or practical matters. He has six children in this country, four of whom are adults. the Appellant has not had significant involvement with the two minor children as they reside with his wife and contact has been limited as result of the index offence and the restraining order.

5. It is only right to note that whilst the particular details of the offence are not strictly speaking relevant to the narrow issues to be decided in this appeal, the Appellant's assault on his wife was, on any view, very nasty indeed. Following an argument apparently arising from the Appellant's belief that his wife was having an affair, he first physically assaulted her and then, it what was described as a calculated act, threw boiling water into her face, resulting in permanent scarring and lasting psychological effects. The Appellant denied the charge of actual bodily harm (a charge that the trial judge thought underestimated the gravity of the offence) and was convicted by a jury. It is apparent from the sentencing remarks by Her Honour Judge Lloyd that in addition to the appalling behaviour at the time of the offence itself, the Appellant had conducted himself very poorly during the trial as well.

### The error of law decision and scope of this appeal

6. My error of law decision is appended to this remake decision, below. In summary, the First-tier Tribunal's error lay in failing to provide adequate reasons for the conclusion that the Appellant would face "very significant obstacles to integration"

on return to Pakistan, with reference to the private life exception contained within section 117C(4) of the Nationality, Immigration and Asylum Act 2002, as amended ("NIAA 2002") and para 399A of the Immigration Rules ("the Rules"). At [13]-[14] and [16] I said the following:

> "13. The difficulties arise in respect of what the judge has not said and done. There is no reference to any of the relevant case-law on the "very significant obstacles to integration" test, such as Kamara [2016] EWCA Civ 813, Bossade (ss.117A-D - interrelationship with Rules) [2015] UKUT 00415 (IAC) and Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 00013 (IAC). A failure to refer to relevant cases normally not, of itself, disclose a material error. However, may be indicative of substantive misdirection and/or a failure to take relevant matters into account.
>
> 14. In this case, as notwithstanding the absence of references, the judge has in my view failed to provide adequate reasons for his conclusion that the Claimant's return to Pakistan would be "unduly harsh" (in other words, that they would be "very significant obstacles to integration"). This is because the following matters have not been expressly addressed:
>
> (1) the fact that the Claimant has adult family members in the United Kingdom who would (or at least might) provide relevant support to him on his return to Pakistan;
>
> (2) that the Claimant speaks Urdu and Punjabi, in addition to English;
>
> (3) the fact of the Claimant's ability to work in the United Kingdom. Mr Bazini's point about the family business was not the subject of any finding by the judge;
>
> (4) the issue of whether the Claimant has knowledge of Pakistani culture and/or society through his familial and/or social ties in this country.
>
> …
>
> 16. In light of the above, I set aside the judge's decision. In so doing, certain animal elements of it shall remain undisturbed. The conclusions on the first two limbs of exception 1 under paragraph 399A of the Rules and section 117C(4) of the 2002 Act shall stand. So too will the finding of fact that the Claimant has no extended family members in Pakistan."

7. In respect of [16], and for the avoidance of any doubt, the judge made the unchallenged finding that the Appellant had resided lawfully in the United Kingdom for most of his life (having entered this country at the age of 6 years and been granted Indefinite Leave to Remain on 25 June 1979) and was socially and culturally integrated here. Thus, the first tow limbs of the three-limb test set out in section 117C(4) NIAA 2002 and para 399A of the Rules are satisfied.

8. The First-tier Tribunal had concluded that the Appellant could not benefit from the family life exception contained within section 117C(5) NIAA 2002 and paragraphs 399a and 399b of the Rules. That conclusion is not challenged and is no longer a live issue in this appeal.

9. In light of the above, the legal issues are narrow and can be stated as follows:

i. can the Appellant show that he would face "very significant obstacles" to reintegration into Pakistani society? If he can, he satisfies all three limbs of the private life exception and his appeal will fall to be allowed;

ii. if he cannot, is he nonetheless able to point to "very compelling circumstances over and above" those described in either of the two exceptions contained within sub-sections 117C(4) and (5) NIAA 2002 and para 399 and 399A of the Rules (in other words, can he show that it would be disproportionate to deport him notwithstanding the very great weight attributable to the public interest)? If he can, his appeal must be allowed on this alternative basis. If he cannot, his appeal must be dismissed.

10. In terms of the factual matrix now in play, a number of matters have been accepted by the Respondent throughout, whilst others have been resolved in light of the First-tier Tribunal's decision and what I said in the error of law decision. The following facts are not in dispute:

i. the Appellant has resided in the United Kingdom with Indefinite Leave to Remain since shortly after his arrival at the age of six in 1979;

ii. the Appellant has no familial ties in Pakistan;

iii. the Appellant has only made a single trip back to Pakistan since arriving in this country, that being at some point shortly after his marriage to his wife in 1992;

iv. the Appellant has frequent contact with at least four of his six children United Kingdom;

v. the Appellant suffers from a mental health condition, namely depression.

**The evidence**

*The documentary evidence*

11. I have had full regard to the documentary evidence contained the Respondent's bundle, the Appellant's bundle produced for the First-tier Tribunal hearing, and the Appellant's supplementary bundle produced for the resumed hearing. The supplementary bundle was provided late and without any explanation from the Appellant's solicitors. That is unsatisfactory and I informed Mr Bazini that I expect a written explanation from JJ Law Chambers. In the event, Mr Avery did not object to this evidence being admitted.

12. The supplementary bundle contains an updated witness statement for the Appellant, a psychiatric report by Consultant Psychiatrist N Pradhan, dated 24 December 2019, GP medical records, and evidence relating to the Appellant's family's business in the United Kingdom.

13. Mr Bazini also provided a number of Internet articles relating to social and cultural practices within Pakistan, the Respondent's Country information Policy Note on healthcare provision in Pakistan, and recent FCO travel advice to British citizens.

*The oral evidence*

14. The Appellant attended and gave oral evidence. There were no other witnesses. In light of the medical report, I indicated at the outset that I would be treating the Appellant as a vulnerable witness within the meaning of the Joint Presidential Guidance Note No.2 of 2010, and with reference to AM (Afghanistan) [2018] 4 WLR 78 and SB (vulnerable adult: credibility) Ghana [2019] UKUT 00398 (IAC). I have assessed his evidence in this context. I am satisfied that the Appellant understood the nature of the proceedings, was able to participate fully, and understood the questions put to him.

15. In examination-in-chief, the Appellant adopted his updated witness statement. He gave further information about his work history in the United Kingdom, stating that he had last worked for an employer some 25 years ago. Since then his only work had been related to the family business, where he currently undertook fairly limited driving duties involving picking items up and delivering them to the shop. He confirmed his ability to speak Urdu and Punjabi, although he stated that he had a clear English accent. I was told that he does like to drink alcohol, although not to excess. The Appellant explained that he had never been religiously observant. His father used to attend Friday prayers, but no longer did so. In respect of relationships, the Appellant stated that he did not wish to marry again, but rather to have "open relationships", as was the case with his current partner, R, whom he had been seeing for a relatively short period of time. This was described as a "friends with benefits" relationship.

16. The Appellant was then cross-examined. He stated that he lives in a property owned by his family and that they also own the shop. Appellant told me that he had been on Incapacity Benefit for approximately 20 years until it was stopped some time ago following a review by the relevant department. The benefit had been awarded and continued on the basis of poor mental health. The Appellant had been on relevant medication almost 25 years, and presently took Propranolol. He had been assessed by a psychiatrist in 1995. I was told that his mother, who lives next door, provided a lot of practical assistance to the Appellant, including encouraging him to get out of bed, and providing food and emotional support.

17. On the subject of his relationship with his wife, the Appellant told me that they had met whilst she was living at a women's refuge. They had been in an intimate relationship before the marriage. During the marriage she had undertaken all domestic tasks and had managed the household money. The Appellant told me that he had never had a bank account. He also stated that neither he nor his wife had really associated with the Pakistani community in their home area. Most of his wife's friend had in fact been "white English".

18. In re-examination, the Appellant stated that his wife's family had thought worse of her because of her relationship with him. His children said that they have no contact with their maternal grandmother.

**The parties' submissions**

19. Mr Avery relied on the reasons for refusal letter and submitted that there were no "very significant obstacles" to the Appellant's integration into Pakistani society. The Appellant's evidence should be treated with caution. It was submitted that the Appellant had been well integrated into the Pakistani community in the United Kingdom and this would stand him in good stead in respect of a return to Pakistan. If indeed the Appellant drank alcohol and was not religiously observant, these would not constitute very significant obstacles. The Appellant had shown himself able to work. The content of the medical report was not challenged, but Mr Avery submitted that the Appellant was only taking medication in this country and could acquire that in Pakistan.

20. On the fall-back argument of "very compelling circumstances over and above", Mr Avery submitted that on any rational basis no such features applied here.

21. Mr Bazini relied on the preserved findings from the decision of the First-tier Tribunal (see above). It was highly unlikely that the Appellant's family in the United Kingdom would be able to provide meaningful support to him if he were in Pakistan, particularly in light of their relatively straitened financial circumstances. The Appellant's own work history was extremely limited. On what was said to be the Appellant's own credible evidence, he was not well-integrated into the Pakistani community in United Kingdom, nor had his wife been. I was referred to letters she had written to the Crown Court following the Appellant's conviction in 2015. In addition, the Appellant's very poor mental health was a significant factor. His overall functioning would be very limited. I was referred to pages 17-18 of the Country Policy and Information Note, together with various pages within the articles on Pakistani society and culture. When placed in the relevant legal framework, the facts of this case disclosed "very significant obstacles to integration" or, alternatively, "very compelling circumstances over and above".

**The relevant legal framework**

22. Although para 399A of the Rules has been referred to throughout these proceedings, it is section 117C NIAA 2002 which provides the actual legislative framework for my consideration in this case. Therefore, hereafter I shall refer only to the 2002 Act, specifically section 117C(4)(c ), that being the sole live criterion within the private life exception. That provision states:

> (4) Exception 1 applies where—
>
> (a) …
>
> (b) …
>
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

23. The meaning of the phrase "very significant obstacles" was originally considered by the Upper Tribunal in Treebhawon and Others (NIAA 2002 Part 5A - compelling

circumstances test) [2017] UKUT 00013 (IAC). At [[37], the Upper Tribunal concluded that:

> "The other limb of the test, "very significant obstacles", erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context. The philosophy and reasoning, with appropriate adjustments, of this Tribunal in its exposition of the sister test "unduly harsh" in MK (Sierra Leone) [2015] UKUT 223 at [46] apply."

24. This analysis was considered by the Court of Appeal in Parveen [2018] EWCA Civ 932. Having quoted the passage set out above, Underhill LJ made the following observations at [9]:

> "I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant"."

25. The approach to be taken in respect of "integration" is well-settled. At [14] of Kamara [2016] 4 WLR 152, the Court of Appeal held that:

> "14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. 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-today 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."

26. In respect of the "very compelling circumstances over and above" issue, NA (Pakistan) [2017] 1 WLR 207 confirms that an individual who has not been sentenced to at least 4 years imprisonment can rely on section 117C(6) NIAA 2002 and, in so doing, can seek to argue that factors arising under either of the two exceptions are, when taken together with other relevant matters, sufficient to meet the very high threshold.

**Findings of fact**

27. My findings of fact are confined only to matters relevant to the fairly narrow issues in this appeal. I have course taken all the evidence into account, including that not specifically mentioned hereafter.

28. In respect of the Appellant's vulnerability, I find that this has not caused him material prejudice in presenting his evidence to me. In fact, on a general level, I found his oral evidence to be candid, internally consistent, and broadly consistent with external sources. In addition, there was nothing inherently improbable about what he has said, either orally or in writing. It is right to say that I found the oral evidence to be of real significance in reaching my findings and conclusions in this appeal.

29. Turning to more specific matters, I find that the report of Dr Pradhan is reliable in all respects. As mentioned earlier, there has been no challenge to this evidence. It clearly emanates from a suitably qualified expert. Although the author saw a number of relevant documents prior to writing the report, it appears as though he had not seen the reasons for refusal letter. However, in all the circumstances (including the absence of any challenge by Mr Avery), this omission does not materially undermine the weight attributable to the evidence. I find that the history given by the Appellant at the assessment interview accords well with what he has said elsewhere concerning his personal background, the relationship with his wife, his long-standing mental health problems going back some 20 years, the index offence, and his current circumstances.

30. In respect of the mental health assessment itself, I place significant weight on the author's view that there was nothing to suggest that the Appellant was being untruthful or exaggerating his symptoms. I place very significant weight on Dr Pradhan's diagnosis, and I find as a fact that the Appellant is, and has been for some time, suffering from a moderate depressive episode. I also find, based on the author's opinion, that the Appellant had begun suffering from a panic disorder in his 20s. Based on the expert opinion, and in light of the evidence as a whole, I find that the prognosis of the Appellant's mental health condition is likely to be poor, given its longevity, his current circumstances, and the high likelihood of additional stresses been placed upon him if he were to be deported to Pakistan.

31. It is Dr Pradhan's opinion that were the Appellant to be separated from a "stable secure family base" in the United Kingdom, it is "likely" that he would suffer a deterioration of his mental health and experience a worsening of his depressive and anxiety symptoms. I find is a fact that the likelihood of such a deterioration is high, given that the Appellant would indeed be separated from the family support network in this country, and would be returning to a country which, to all intents and purposes, would be entirely foreign to him and in respect of which he would have no familial or social support.

32. The GP medical records contained within the supplementary bundle provide additional corroboration of Dr Pradhan's views and the evidence of the Appellant himself. The "Significant Past" contains references to chronic anxiety and personality disorders. The latter is linked to 1995 and is consistent with the Appellant's evidence that he saw a psychiatrist at this time.

33. I find that as matters stand, the Appellant is only taking Propranolol by way of medication. He is not receiving, for example, CBT.

34. I find that the Appellant did visit Pakistan on a single occasion, soon after his marriage to his wife in 1992. There is no reason to disbelieve his account of events. I accept that the trip was traumatic for the couple, as described in his first witness statement, his wife's letter, and as recorded in Dr Pradhan's report.

35. I find that the Appellant in fact has a very limited employment history in this country. I accept that his last job, aside from working for the family business, was over 20 years ago. That fits well enough with his evidence (supported by the GP records) that he has a long-standing mental health problem. It is also consistent with his claim to have been in receipt of what used to be called Incapacity Benefit for approximately 20 years. It is more likely than not that the onset of mental health problems in or around 1995 led to an inability to work. I am certainly not prepared to indulge in any speculation that the incapacity to work was ever fortunately perpetuated. In fairness to Mr Avery, no such suggestion has been put forward.

36. I find that the Appellant has been undertaking limited "work" for the family business. There has been no challenge to his claim that this has only involved driving to and from a wholesaler in order to pick up items which have been listed for him by his sister (who runs the business). It is clear to me that these tasks involve minimal input by the Appellant and, contrary to Mr Avery's submission, do not indicate that any great responsibility has been placed upon the Appellant by family members.

37. In respect of that family business, the accounts contained in the supplementary bundle indicate very low net profit indeed. For the year ending 5 April 2018, the figure amounted to only £7160. Bank statements for other members of the family confirm the Appellant's own evidence that they are all seemingly living on limited financial resources. I find that this is the case. In all the circumstances, I find that it is unlikely that the Appellant would be able to receive meaningful and stable financial assistance from his family in this country were he to return to Pakistan.

38. Whilst treating the Appellant's evidence with a degree of caution, I find that he has provided inaccurate picture of the general support given to him by other members of his family, in particular his mother. Although it is the case that he undertakes a certain amount of work for the family business, his evidence that he suffers from insomnia, low mood, and general lethargy, is entirely consistent with his mental health condition. It is plausible that his mother would provide emotional and practical support to him on a day-to-day basis. I am prepared to accept that she does encourage him to get out of bed, to eat properly, and that she provides food for him.

39. A further aspect of the evidence which struck me as not only credible, but indicative of the Appellant's overall ability to have managed his affairs on a fully independent basis, is his claim that he has never had a bank account. I find this to be the case.

40. I find that the Appellant does speak Urdu and Punjabi. Given his time in this country and the age at which he arrived here, it is highly likely that he does so with what may be described as an English accent.

41. This leads me to the question of the Appellant's integration into the Pakistani community in the United Kingdom. Mr Avery's position is that there are close ties, and that these are relevant to the question of the Appellant's circumstances on return to that country. There are a number of aspects of the evidence before me which lead me to find that there has in fact been little integration, when that term is seen in its broader context.

42. First, I accept that the Appellant has provided truthful evidence as regards the nature of his religious observance. This evidence, which was not challenged by Mr Avery, satisfies me that he had never observed fasting within Ramadan, has not celebrated Eid, has not attended mosque, and has not even concern himself with the halal dietary requirements. I also accept that at least one of his siblings was similarly disinclined to observe these basic aspects of the Muslim faith. It is also likely that the Appellant's father was not particularly observant, given that he had permitted his son to remain detached from the faith. Whilst in no way suggesting that all Muslims are presumed to be fully observant, that faith is reasonably seen as a relatively significant aspect of much of the Pakistani community in the United Kingdom. In turn, this particular aspect of the evidence supports the Appellant's contention that he has not been particularly integrated into that community.

43. Second, I accept that the Appellant entered into an intimate relationship with his wife prior to their marriage. His evidence on this was clear and, once again, went unchallenged. A pre-marital relationship would, on the face of it, run contrary to the general expectations of at least the more religiously observant elements of the Pakistani community, whether in this country or elsewhere.

44. Third, and importantly, there is a letter from Appellant's wife, contained in the main bundle, dated 2 February 2017, which I am satisfied accurately represented her view at the time (I note that a similarly supportive letter had been written by her to the Crown Court Judge in 2016). Amongst other matters, she states that she had refused to enter into an arranged marriage, as had been demanded by her family. The letter indicates that she has no family support at all. This indicates that her decision to marry the Appellant was seen as a slight on her family, and that this consequently led to a breakdown of the relationship between them and her. It is also of note that the appellant met his wife whilst she was residing in a women's refuge. I infer from this that she had at that time been distanced, for one reason or another, from her own family and community.

45. Fourth, the Appellant has told me, in what I regard as credible terms, that he likes to drink alcohol and that he wishes to have "open relationships" with women. I am satisfied that he is currently in such a relationship.

46. Bringing the above together, there is a cumulative force in the non-integration submission made by Mr Bazini. By contrast, I do not accept Mr Avery's argument that the sentencing remarks indicate that the Appellant himself was integrated in the Pakistani community here. First, the wife's fear of the Appellant following the offence does not of itself indicate that he was pursuing a "cultural agenda", as it were. Second, the possible views and actions of other members of the Pakistani community, including potentially those within the Appellant's family, do not necessarily lead to the conclusion that the Appellant himself was acting from a similar platform.

**Conclusions**

47. I now turn to place the facts of this case within the applicable legal framework.

48. As can be seen from the case-law, the Appellant must meet a high threshold in respect of the first issue, namely whether there are "very significant obstacles" to his integration into Pakistani society.

49. Applying the high threshold and having reached a broad evaluative judgment on the particular facts of this case, I conclude that the Appellant satisfies the test. My reasons for this conclusion are as follows.

50. I start with what may be considered the most obvious factor in the Appellant's favour, namely his absence from Pakistan since the age of just 6 years old. This point encapsulates two aspects: first, that the Appellant has no meaningful memory of having lived in the country of his birth. In other words, there is no embedded "database" upon which he can draw; second, that he has been brought up, educated, and lived as an adult in the United Kingdom for the overwhelming majority of his life. On the face of it, it is accurate to say that the Appellant is a complete stranger to Pakistan.

51. I take into account the fact of the Appellant's single visit to Pakistan over 20 years ago. As I have found above, this was in no way a happy experience. On the Appellant's account, it resulted in him setting himself against the prospect of ever returning there. That subjective element is relevant to my overall assessment.

52. The Appellant has no family or other social network in Pakistan. The consequence of this is that what might otherwise provide a protective or mitigating factor in respect of the very great difficulties likely to confront the Appellant upon a return, is absent.

53. On my findings, the Appellant's family in the United Kingdom be unable to provide meaningful and sustainable financial assistance to him in Pakistan. Again, a factor potentially capable of assisting in reintegration in one way or another, is absent

54. A further potential ameliorating factor might be an individual's familiarity with the social and/or cultural and/or religious norms and peculiarities of the society in question. In the present case, I have found that the Appellant has not been well-integrated into the Pakistani community in the United Kingdom. In many respects, he has lived his life outside of what may be considered "normal" or "expected" parameters. With regards to the articles provided by Mr Bazini, the Appellant's relationship with his wife and current partner, together with his non-observance of any significant aspects of the Muslim faith, would undoubtedly place him beyond the position of an "insider" in Pakistan (certainly in respect of the great majority of the population in that country). In short terms, this is not a case in which the returnee has already, to a greater or lesser extent, lived a life reflective of that which is the norm in the country of origin.

55. Whilst perhaps not of any great significance seen in isolation, the Appellant's like of alcohol and his wish to have "open relationships" simply reinforces the distance between him and the type of life that he would have to adapt to in Pakistan.

56. The Appellant is not a healthy individual. I have found that he suffers from an enduring mental health condition that has had a significant impact upon his day-to-day life in this country. Over the course of much of his life, this has led to an inability to work. I have found that he needs emotional and practical support from family members. I have found that the prognosis for him is poor and is likely to be much worse upon return to Pakistan. This is for the fairly obvious reason that such an occurrence would amount to a very significant stressor in his life, particularly when combined with the absence of any support network in that country. Thus, the difficulties I have set out in the preceding paragraphs are highly likely to be compounded by the mental health condition, and *vice versa*.

57. It is quite possible that the Appellant would in theory be able to access medication in Pakistan, but in my view that fact does not significantly detract from the cumulative force of the other factors weighing in his favour. The medication he has been taken in this country for many, many years has not prevented very significant functional impairment and there is no good reason to suppose that taking similar medication in Pakistan would have any greater benefit. I also bear in mind what is said in the Country Policy and Information Note to the effect that mental health care provision in Pakistan is, to say the very least, extremely limited.

58. I have found that the Appellant has been able to continue a limited form of work behalf of the family business. I stress the word "limited" because in reality it has amounted to not much more than driving from A to B and picking up goods which have been listed for him in advance. He does not have what can properly be described as a good track record of employment, nor has he acquired any readily transferable skills whilst in the United Kingdom, aside perhaps from being able to drive. Having said that, I do take into account the fact that unskilled, manual labour may in principle be an option for the Appellant in Pakistan.

59. I have also found that the Appellant has had relatively limited experience in managing his own affairs, particularly in relation to financial matters. The lack of any bank account ever being held is an indication of this.

60. The Appellant does speak Urdu and Punjabi, and this linguistic ability would no doubt be of assistance. He would be identifiable as coming from abroad, in light of what I have accepted is an accent, but this of itself would probably not cause any great difficulties.

61. These considerations, *viewed cumulatively*, disclose what I deem to be very significant obstacles, both on a subjective and objective basis, to the Appellant understanding how life in Pakistan is carried on, having the appropriate capacity to participate in it such that he would have a reasonable opportunity to be accepted in that society, being able to establish within a reasonable time a variety of relationships (social and economic), and to the actuality of him considering himself to be an "insider" and for others to perceive and/or treat him similarly.

62. The Appellant therefore satisfies the third and final limb of the private life exception under section 117C(4) NIAA 2002. On this basis, his appeal must be allowed.

63. In light of my conclusion on the exception, it is unnecessary to go on and consider the alternative argument of whether "very compelling circumstances over and above" those described in the exceptions exist. On the face of it, it is somewhat difficult to see how, in the absence of there being "very significant obstacles to integration", the Appellant would be able to show sufficiently strong additional features in this case. The primary focus of the evidence and submissions has always been on the difficulties lying in the path of return, rather than, for example, particularly strong relationships with the adult children.

**Anonymity**

64. The First-tier Tribunal made an anonymity direction. I maintained this in respect of my error of law decision. This was on the basis that the Appellant's case concerns minor children and, in respect of his wife, a victim of domestic violence. Although I have not provided any details of these individuals in my error of law and remake decisions, maintaining the anonymity direction is nonetheless appropriate in all the circumstances.

**Postscript**

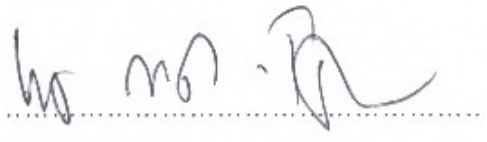
65. As mentioned earlier in my decision, I had asked for an explanation from the Appellant's solicitors as to why the supplementary bundle was served late. To their credit, a response was sent later on the day of the hearing and received by the Upper Tribunal the day after. I am grateful to them for this. I accept what is said in the letter by way of explanation, particularly in relation to the obtaining of the medical report from Dr Pradhan. The only further comment I would make is that where delays have occurred, representatives should inform the Upper Tribunal (and indeed the Respondent) to inform them of this in advance of a hearing.

**Notice of Decision**

**The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.**

**I have set aside the decision of the First-tier Tribunal.**

**I remake the decision by allowing the appeal on the ground that the Respondent's refusal of the human rights claim was unlawful under section 6 of the Human Rights Act 1998, with reference to Article 8 ECHR.**

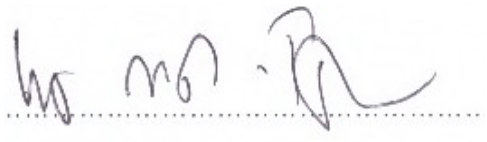


Signed Date: 16 January 2020

Upper Tribunal Judge Norton-Taylor

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

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to maintain the decision of the First-tier Tribunal not to make any award in all the circumstances.



Signed Date: 16 January 2020

Upper Tribunal Judge Norton-Taylor

**APPENDIX: ERROR OF LAW DECISION**

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/14181/2017

**THE IMMIGRATION ACTS**

**Heard at Field House**
**On 8 October 2019**

**Decision & Reasons Promulgated**

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**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**And**

**A S**
**(ANONYMITY DIRECTION MADE)**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. 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 original Appellant (referred to as the Claimant in this decision). This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**Representation:**
For the Appellant: Ms A Holmes, Senior Home Office Presenting Officer
For the Respondent: Mr D Bazini, Counsel, instructed by JJ Law Chambers

**DECISION AND REASONS**

**Introduction**

1. For ease of reference, I shall refer to the Appellant in the proceedings before the Upper Tribunal as the Secretary of State and the Respondent as the Claimant.

2. This is a challenge by the Secretary of State against the decision of First-tier Tribunal Judge G J Ferguson ("the judge"), promulgated on 9 August 2019, in which he allowed the Claimant's appeal against the Secretary of State's decision of 19 October 2017, refusing his human rights claim. That claim in response to the Secretary of State's decision to make a deportation order against the Appellant following his conviction for actual bodily harm on 13 November 2015 and the subsequent sentence of 2 years' and 9 months' imprisonment.

**The judge's decision**

3. It was common ground that the Claimant, who was born in March 1973, left his native Pakistan at the age of 6 and had resided in the United Kingdom ever since. He had been granted indefinite leave to remain in 1979. In light of the circumstances, the Secretary of State had accepted that the Claimant had spent most of his life lawfully resident in this country for the purposes of paragraph 399A(a) of the Immigration Rules and section 117C(4)(a) of the Nationality, Immigration and Asylum Act 2002, as amended.

4. At paragraphs 26 and 27 of his decision, the judge found that the Claimant was socially and culturally integrated into the United Kingdom, with reference to paragraph 399A(b) of the Rules and section 117C(4)(b) of the 2002 Act.

5. The judge then considers the issue of "very significant obstacles" under paragraph 399A(c) of the Rules and section 117C(4)(c) of the 2002 Act. He makes a specific finding that the Claimant did not have any extended family members residing in Pakistan. The judge attaches weight to the fact that the Claimant's residence in the United Kingdom was, as at the date of hearing, was twice that required under other provisions of the Rules (presumably, the judge had in mind paragraph 276ADE(1)(iii)). Also of importance was the fact that the Claimant had left Pakistan at a young age, thereby, in the judge's view, not having established any ties in his home country prior to departure. The absence of ties to Pakistan, the age at departure, and the length of time spent in the United Kingdom, combined to lead the judge to the conclusion that it would be "unduly harsh" for the Claimant to return. The satisfaction of the exception provided for in paragraph 399A of the Rules and section 117C(4) of the 2002 Act permitted the Claimant to succeed in his appeal.

**The grounds of appeal and grant of permission**

6. The grounds do not challenge the judge's conclusion on social and cultural integration in this country. Rather, they focus on the issue of "very significant obstacles". It is said that:

    1) the judge failed to apply the "very significant obstacles" test;

2) the judge failed to give adequate reasons;

3) that in any event a lack of family ties and experience of living in a country "do not amount to" very significant obstacles, and that the Claimant could not fall within exception 1 under the Rules and section 117C(4) of the 2002 Act.

7. Permission to appeal was granted by First-tier Tribunal Judge Murray on 3 September 2019.

**The hearing**

8. Ms Holmes relied on the grounds of appeal. In the first instance, she submitted that there was a difference between the "very significant obstacles" test and that of "unduly harsh": the former being objective in nature, and the latter more subjective. If there were no material difference, she submitted that the judge had failed to take into account or provide reasons in respect of the Claimant's ability to work, the supportive family he has in the United Kingdom, and his linguistic abilities (ability to speak Punjabi and Urdu, in addition to English).

9. Mr Bazini submitted that there was not a great deal of difference between the two tests and in the context of this case any difference was without a material distinction. He submitted that every case was fact-specific. Although the judge had not referred to relevant case-law, as a matter of substance he had taken relevant matters into account. He had been entitled to place real significance on the age at which the Claimant left Pakistan and the time he has resided in this country. The linguistic issue had been implicitly taken into account. It was speculative to suggest that the Claimant could find work in Pakistan when he had only ever worked for a family business in this country. In all the circumstances, it was submitted that the judge's decision was sustainable.

**Decision on error of law**

10. I conclude that the judge has materially erred in law.

11. When drawing considerations together at paragraph 32, the judge concludes that it would be "unduly harsh" for the Claimant to return to Pakistan. The relevant test was of course that of "very significant obstacles to integration" under paragraph 399A(c) and section 117C(4)(c ) of the 2002 Act. It is, with respect, somewhat puzzling as to why the wrong terminology was used at this stage. However, the judge had clearly set out the correct provisions earlier in his decision and, when he turned to consider the third element of exception 1 under the Rules and the 2002 Act, he made express reference to "very significant obstacles" (see paragraph 28). Furthermore, at least for the purposes of this appeal, it would seem as though there is little material difference between the two tests. Both will often contain a combination of subjective and objective factors. In short, the judge's error is not material.

12. The judge was clearly entitled to take the Claimant's age when he left Pakistan and the significant time spent living in the United Kingdom into account when assessing whether the exception was made out.

13. The difficulties arise in respect of what the judge has not said and done. There is no reference to any of the relevant case-law on the "very significant obstacles to integration" test, such as Kamara [2016] EWCA Civ 813, Bossade (ss.117A-D - interrelationship with Rules) [2015] UKUT 00415 (IAC) and Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 00013 (IAC). A failure to refer to relevant cases normally not, of itself, disclose a material error. However, may be indicative of substantive misdirection and/or a failure to take relevant matters into account.

14. In this case, as notwithstanding the absence of references, the judge has in my view failed to provide adequate reasons for his conclusion that the Claimant's return to Pakistan would be "unduly harsh" (in other words, that they would be "very significant obstacles to integration"). This is because the following matters have not been expressly addressed:

    (1) the fact that the Claimant has adult family members in the United Kingdom who would (or at least might) provide relevant support to him on his return to Pakistan;

    (2) that the Claimant speaks Urdu and Punjabi, in addition to English;

    (3) the fact of the Claimant's ability to work in the United Kingdom. Mr Bazini's point about the family business was not the subject of any finding by the judge;

    (4) the issue of whether the Claimant has knowledge of Pakistani culture and/or society through his familial and/or social ties in this country.

15. To the extent that Mr Bazini suggests that none of these matters would make any difference to the outcome because the absence of any ties to Pakistan leads to one rational conclusion only, I disagree. Given the high threshold for showing "very significant obstacles" and the need for a broad evaluative judgment on the question of "integration", these matters *could* have a material bearing on this case. Similarly, to the extent that the Secretary of State raises a perversity challenge, it is misconceived. It cannot properly be said that on no legitimate view of the Claimant's circumstances as a whole (including those not expressly dealt with by the judge) could he succeed.

16. In light of the above, I set aside the judge's decision. In so doing, certain animal elements of it shall remain undisturbed. The conclusions on the first two limbs of exception 1 under paragraph 399A of the Rules and section 117C(4) of the 2002 Act shall stand. So too will the finding of fact that the Claimant has no extended family members in Pakistan.

**Disposal**

**17. I consider it appropriate to retain this matter in the Upper Tribunal and listed for a resumed hearing before myself in due course. At that hearing, the sole focus shall be the third limb of exception 1 under paragraph 399A of the Rules and section 117C(4) of the 2002 Act. Oral evidence on relevant issues may be permitted, subject to the provision of an updated witness statement from the Claimant.**

**Anonymity**

18. The First-tier Tribunal made an anonymity order because of the existence of minor children. Although these children have not been referred to in my decision, in all the circumstances it is appropriate to continue the order, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

**Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**I set aside the decision of the First-tier Tribunal.**

**I adjourn this appeal for a resumed hearing in due course.**

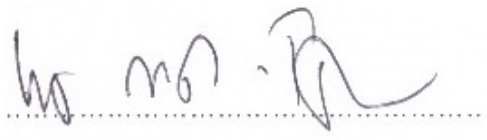
**Directions to the parties**

1) The Claimant shall file and serve any updated evidence relied on no later than 14 days before the resumed hearing;

2) Oral evidence will only be permitted if the evidence referred to above includes an updated witness statement from the Claimant;

3) No interpreter shall be booked by the Upper Tribunal unless otherwise advised by the Claimant;

4) The Secretary of State shall file and serve any additional evidence relied on no later than 10 days before the resumed hearing;

Signed  Date: 14 October 2019

Upper Tribunal Judge Norton-Taylor