Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10023/2019

THE IMMIGRATION ACTS

Heard at Field House by video conference on 01 June 2021	**Decision Promulgated On 28 June 2021**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

S K
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involved sensitive issues relating to his partner's background and health. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:
For the appellant: Mr S. Winter, instructed by Maguire Solicitors
For the respondent: Mr S. Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 23 May 2019 to refuse a human rights claim.

2. First-tier Tribunal Judge S.P.J. Buchanan ("the judge") dismissed the appeal in a decision promulgated on 05 December 2019. In a decision promulgated on 17 November 2020 the Upper Tribunal found that there was no error of law in the judge's findings relating to the allegation of deception regarding a TOEIC certificate. Those findings were preserved. However, the Upper Tribunal concluded that the judge's findings relating to Article 8 were flawed. That aspect of the decision was set aside and is now being remade by the Upper Tribunal.

3. Due to the continued need to take precautions to prevent the spread of Covid 19 the hearing took place in a court room at Field House with the legal representatives and witnesses appearing by video conference, and with the facility for others to attend remotely. I was satisfied that this was consistent with the open justice principle, that the parties could make their submissions clearly, and that the case could be heard fairly by this mode of hearing.

Decision and reasons

Article 8(1) – right to family life

4. The appellant entered the UK in December 2010 and remained here lawfully until 30 September 2014 when it seems that he was served with a notice curtailing his existing leave and a decision to remove him because he had submitted a fraudulent TOEIC English language certificate with a previous application. The appellant left the UK on 26 November 2014 and travelled to the Republic of Ireland where he made a protection claim. It is reasonable to infer that the claim was refused because he was returned to the UK on 07 September 2015. He has remained in the UK without leave since then.

5. Although there is little evidence of the extent of the appellant's private life in the UK, it is reasonable to infer that it is likely that he has made friends and other connections here during the nine year period he has lived in the UK. The case turns primarily on his relationship with his partner 'A', who he met in 2017. She is a British citizen who was born in the UK and has lived here all her life. Although the appellant is 26 years younger than his partner and has shown himself willing to use deception to remain in the UK, it is not disputed that the relationship is genuine and subsisting. In light of these connections I am satisfied that removal in consequence of the decision is likely to interfere with the appellant's right to private and family life in a sufficiently grave way as to engage the operation of Article 8(1) of the European Convention.

Article 8(2) – proportionality

6. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that

rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.

7. Part 5A of the NIAA 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to private or family life and as a result is unlawful under the Human Rights Act 1998. In considering the 'public interest question' a court or tribunal must have regard to the issues outlined in section 117B in non-deportation cases. The 'public interest question' means the question of whether interference with a person's right to respect for their private or family life is justified under Article 8(2) of the European Convention.

8. It is in the public interest to maintain an effective system of immigration control. The requirements of the immigration rules and the statutory provisions are said to reflect the respondent's position as to where a fair balance is struck for the purpose of Article 8 of the European Convention.

9. The appellant does not meet the requirements of the immigration rules. He does not meet the requirements of paragraph 276B on grounds of 10 years lawful residence. The appellant does not meet the 20-year long residence requirement contained in paragraph 276ADE(1)(iii). It is not argued, nor arguable, that there are 'very significant obstacles' to the appellant being able to integrate in Pakistan for the purpose of paragraph 276ADE(1)(vi). He was born and brought up in Pakistan and continues to have linguistic, cultural and family ties there. He is an educated man. There is no evidence to suggest that he would not be capable of finding work in Pakistan. He is still in regular contact with close family members there.

10. The First-tier Tribunal judge was satisfied that the respondent had discharged the burden of proving that the appellant used deception in a previous application by submitting a fraudulent TOEIC certificate. For this reason the respondent refused the human rights claim as a partner under the 'Suitability' requirements of S-LTR4.1 of Appendix FM of the immigration rules.

11. In conducting an overall balancing exercise under Article 8(2) I have considered what weight can be given to the public interest in maintaining an effective system of immigration control. The appellant does not meet the requirements of the immigration rules and significant weight must be given to the fact that the appellant has been found to have used deception in an application for leave to remain and has remained in the UK for many years without leave.

12. The evidence relating to the strength of his private life in the UK is weak. Section 117B states that little weight should be given to a private life established at a time when a person's immigration status is precarious or unlawful. The appellant speaks English and would be able to work and be financially independent if had had permission to do so. Those factors are neutral in the balancing exercise. If the

appellant's position was the only consideration in this appeal I would have no hesitation in finding that it would be proportionate to remove him from the UK.

13. However, in my assessment the evidence relating to the appellant's partner is compelling. Mr Kotas made clear that there was no factual dispute about her history or the content of the psychological and medical evidence produced in support of the appeal. In light of this concession it is not necessary to set out her history in any detail because both parties are aware of the content of the evidence although it is necessary to summarise her situation in general terms for the purpose of explaining this decision.

14. 'A' is a 60 year old woman who was born and brought up in the UK. She only speaks English. She told me that she has never left the UK. She suffered physical abuse from her step-mother as a child and was taken into care when she was six years old. She remained in care until she was 16 years old. She met her former husband shortly after she came out of care. He was at least 10 years older than her. She was married for 39 years during which time she had eight children. She suffered serious domestic abuse, including rape, throughout her marriage. She was only able to extricate herself from the marriage after being diagnosed with cancer in 2012. Even then, she could only do so by moving out of the area to a women's refuge in another town and by severing all contact with her children so that her husband could not find out where she was living.

15. Dr Fraser Morrison conducted a psychological assessment, which included a review of her medical records. He said that the records showed that 'A' has long standing mental health problems, including three suicide attempts. His own assessment was that she met the criteria for Major Depressive Disorder and was suffering from significant symptoms of depression. In his opinion she was likely to suffer a significant deterioration in her mental health if her husband was returned to Pakistan because he appeared to 'occupy a supportive role within her life'. He went on to say that given the nature of her mental health difficulties he considered that 'it is unlikely that she would be able to function in Pakistan'. Although he did not go on to explain this opinion in more detail, it is clear from an overall reading of his conclusions that any destabilisation of the fragile equilibrium she has found since leaving her husband, including the possibility of having to relocate to Pakistan, was likely to have a significant impact on her mental health.

16. Dr Morrison's report contains a summary of 'A's' medical records. As a result of prolonged exposure to violence and abuse since childhood 'A' is a particularly vulnerable person who has required considerable support from health professionals as well as the police. She found further support and solace when she became a born again Christian. The medical records show management of depressive symptoms over many years and notes to indicate that she was also presenting with symptoms of Post-traumatic Stress Disorder (PTSD). At one point they also noted that she reported being the subject of an online dating scam. By 2017 her GP noted that she was in a relationship with the appellant, which seemed to be supportive. However, her doctor expressed some concern that she was vulnerable to the relationship being used for immigration purposes.

17. At the hearing both witnesses were consistent in saying that 'A' is now tentatively rebuilding a relationship with her adult children. She explained that they did not know about her relationship with the appellant yet because reconciliation was still at an early stage. 'A' told me that her health has been improving since the appellant came into her life. She is cancer free. She still has some counselling as and when she wants it, which is around once a month. 'A' said that she has had some contact with the appellant's parents over the telephone. She said that she would like to visit Pakistan to meet the appellant's family but did not think that she would cope with living there. Her roots are in the UK and she had just begun the tentative process of reconciliation with her children. At some point she would be able to tell them about her marriage to the appellant. She is a devout Christian who goes to church every Sunday. She heard that there were Christian churches in Pakistan but did not know 'how easy it would be for a white woman there'. 'A' told me that the appellant was her world and that she would be devastated if he was removed to Pakistan.

18. 'A' entered into the relationship with the appellant in the knowledge that he did not have leave to remain and that his position in the UK was precarious. It is trite law that the European Convention does not oblige a state to respect the preferred country of residence of a couple. There would be no breach of the appellant's right to family life if there are no insurmountable obstacles to the couple continuing their life together outside the UK.

19. In practical terms the appellant could return to Pakistan, a country he is familiar with, find work and accommodation, and could support his partner. He has close family members there who may be able to provide some practical support even if his evidence is that his parents are retired and have limited means.

20. Mr Kotas said that he had been minded to concede that there would be insurmountable obstacles to 'A' living in Pakistan, but he did not do so because (i) the evidence given at the hearing indicated that 'A's' health had improved; and (ii) she gave evidence to say that she got on well with the appellant's family. Nevertheless, his submission still only went so far as to suggest that the case for 'A' relocating to Pakistan was borderline. He emphasised the fact that the deception relating to the TOEIC certificate was a weighty factor and that the statutory framework contained in section 117B indicated that little weight should be given to his private and family life in the circumstances. He emphasised that compelling circumstances would need to be shown to outweigh the public interest considerations. I note that he did not go so far as to ask the Upper Tribunal to dismiss the appeal when he closed his case for the respondent.

21. I have already outlined why I would have no hesitation in dismissing this appeal if I was only considering the appellant's position. However, I conclude that 'A's' position is very compelling and that this outweighs what would otherwise be weighty public interest considerations relating to the maintenance of immigration control. After a lifetime of abuse 'A' has been able to rebuild her life and find some semblance of safety and stability with the assistance of professional services. According to her evidence, the support she receives from the appellant has also played an important part in this recovery. The evidence shows that the fragile

stability that she is beginning to find for the first time in her life is likely to be extremely important to her health and wellbeing. It is allowing her to begin the slow process of reconciliation with her children.

22. 'A' is a white British woman who has no experience of life in another country. Although English is spoken in Pakistan, she does not speak Urdu or any other local languages which are likely to be more widely used. She would be a Christian in a Muslim country where there are still problems with elements of religious extremism. She would also be a woman in a country that still has widespread and deep seated patriarchal attitudes towards women. Whilst some medical and other support services are likely to be available in Pakistan, she would be removed from an established support network in the UK that has created the conditions for some improvement in her health in recent years. Given the compelling circumstances surrounding the fracturing of her relationship with her children as a result of severe domestic abuse, relocating to Pakistan would also hinder the progress that she has recently made towards reconciliation. She also has established connections and ongoing support through her regular attendance at church in the UK, which would be lost if she relocated to Pakistan.

23. It is not disputed that the couple are in a genuine and subsisting relationship. Although the appellant does appear to play a supportive role in 'A's' life, and the couple have been in a relationship for several years, it is also the case that he has been willing to use deception to remain in the UK in the past. Like her doctor, I have some concerns about 'A's' vulnerability to exploitation and cannot entirely discount the possibility that the appellant may have mixed motives for being in this relationship. The appellant should be under no illusion that the only basis for allowing him to remain in the UK is his continued support for 'A'. But for his relationship with 'A', it would be proportionate to remove him to Pakistan.

24. Nevertheless, I am satisfied that 'A's' circumstances are sufficiently compelling to show that there would be insurmountable obstacles to the couple continuing their family life outside the UK and that the impact of his removal would be equally damaging to 'A' if she had to remain in the UK without his support. The decision to refuse leave to remain on human rights grounds did not strike a fair balance on the facts of this case.

25. For these reasons I conclude that removal of the appellant would be unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is ALLOWED on human rights grounds

Signed M. Canavan Date 17 June 2021
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email

ANNEX

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10023/2019

THE IMMIGRATION ACTS

Heard at Field House by video conference on 12 August 2020 (V)

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN

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Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves [sensitive issues relating to his partner's background and health]. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:
For the appellant: Mr S. Winter, instructed by Maguire Solicitors
For the respondent: Mr A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 23 May 2019 to refuse a human rights claim.

2. First-tier Tribunal Judge S.P.J. Buchanan ("the judge") dismissed the appeal in a decision promulgated on 05 December 2019.

3. The appellant appeals the First-tier Tribunal decision on the following grounds:

   (i) The judge erred in his assessment of the expert evidence of Chris Stanbury in relation to the allegation of deception in an English language test. He failed to recognise that references to the case of 'MA' throughout the report were to the reported decision of the Upper Tribunal in *MA (ETS-TOEIC testing)* [2016] UKUT 00450, in which Mr Stanbury gave evidence. The decision was also referred to in the appellant's skeleton argument and a copy of the decision was included in the appellant's bundle if it was not clear from the face of the report.

   (ii) The judge failed to give adequate weight to the psychological report relating to the appellant's wife and erred in his approach to the assessment of 'insurmountable obstacles' test for the purpose of paragraph EX.1 of Appendix A and the broader Article 8 balancing exercise.

Decision and reasons

Assessment of fraud allegation

4. In most cases it is open to a judge to place less weight on expert evidence when the underlying evidence referred to in a report is not before the Tribunal to put the expert's opinion in context. However, in this case nothing in the First-tier Tribunal decision appears to indicate that the judge placed Mr Stanbury's references to other materials, or his expertise to comment, in proper context.

5. Although Mr Stanbury's report did not provide the full citation for the reported case in which he gave oral evidence, it was referred to in the appellant's skeleton argument and a copy of the decision was before the First-tier Tribunal. The decision in *MA* did not purport to make any factually binding findings about the way in which voice recordings were processed by a college conducting fraud or by ETS. However, it was relevant that the Upper Tribunal acknowledged the expertise of those who prepared expert evidence in that case. The Upper Tribunal also set out the expert evidence given by Mr Stanbury in detail. Given that this was a reported decision of the Upper Tribunal it was at least necessary for the First-tier Tribunal to acknowledge and give appropriate weight to the fact that Mr Stanbury was an expert who had given oral evidence to the Upper Tribunal on a previous occasion and to take into account the fact that his evidence was deemed helpful to the assessment in that case: see (13) *MA*.

6. Mr Stanbury accepted that his opinion involved a "high degree of speculation" albeit in the context of his many years of experience in IT [5.2.1]. He concluded that it was possible that voice files of tests could be inadvertently or deliberately substituted by another recording at a particular test centre before the file was sent to ETS in the USA [5.2.33]. He discussed the unlikely possibility of candidates being able to manipulate the test result from the computer at the test centre and/or the possibility of 'mirror rooms' being used by the test centre with reference to other expert evidence that was produced in the case of *MA*. However, his discussion took place on a high level of generality. Both scenarios only go to the possibility of fraud occurring rather than suggesting circumstances where it was less likely to occur.

7. In the summary of his conclusions Mr Stanbury noted that it was agreed that the voice recording provided to ETS was not the appellant. The appellant asserted that he took the test himself, but the Home Office alleged that he used a proxy test taker. In his opinion the test recording was either never made because the test centre was falsifying all tests. If it was made, it might have been either deliberately or accidentally lost or confused with another recording by the test centre. It was at least possible that this could have been done without the appellant's knowledge or involvement [5.7.2].

8. Mr Stanbury said that he had investigated nine cases and now believed that it was more likely that there was a 'mirror' system used by proxy test takers and that all the candidates, genuine or otherwise, may have had their input ignored and substituted for that of proxy test takers. This view was reached independently by ETS assessors [5.7.3]. However, this observation was made in response to a tiny sample of cases and without reference to any particular college. The extent of ETS fraud may have been more serious in some colleges than others. Without knowing what the extent of the fraud might have been in Darwin's College, Mr Stanbury's general observation could not be given all that much weight when assessing whether this appellant was likely to have cheated in the test or was an unwitting casualty of generalised fraud at that particular test centre.

9. Mr Stanbury's overarching conclusion was that there were several alternative scenarios that might explain why the voice recording was not of the appellant. He made clear that he could not say with any certainty whether a candidate did or did not cheat by using a proxy but it was at least possible that a candidates voice files could have been swapped with or without their knowledge [5.7.5].

10. Even if the judge had placed Mr Stanbury's evidence in proper context of the reported decision in *MA*, at highest, his opinion was that it was possible that a voice recording could be substituted at the test centre before being sent to ETS. The fact that it could be done with an applicant's knowledge and consent would clearly go to the issue of fraud and was a matter that would support the respondent's case. The fact that it might have been done by a test centre as a matter of course, and that some genuine candidates might have had their tests substituted without their knowledge as part of a widespread fraud, was only a possibility. It might go to support an appellant's evidence, but the issue could not be assessed on Mr Stanbury's evidence

alone without further evidence about the nature and extent of any potential fraud at Darwin's College. Whether the substitution was done with the appellant's knowledge or not was a matter for the judge to assess having considered the evidence as a whole, which included his assessment of the appellant's evidence in response to the allegation.

11. The judge found that he could place little weight on Mr Stanbury's conclusions because his comments at [5.7.2] appeared to contradict his conclusion at [5.7.5]. My reading of Mr Stanbury's report at [5.7.2] is that he only suggested that there was a possibility that the voice recording could have been substituted by the test provider, either deliberately or accidentally, without the appellant's knowledge. I do not read what he says as suggesting that the appellant did not as a matter of fact have knowledge of the substitution. This is broadly consistent with his overarching conclusion at [5.7.5] that he could not say in any individual case whether a substitution was done with the candidate's knowledge or not.

12. Although the judge's reasons for giving little weight to the expert evidence failed to put Mr Stanbury's references to the case of *MA* in proper context, and may have read more into his conclusion at [5.7.2] than was intended by the expert, even if the judge had taken his evidence at its highest, it only explained in technical terms why Mr Stanbury considered that there was a possibility that a substitution could take place before the voice recording was sent to ETS. The overall possibility that a substitution of voice recordings could take place was obvious given the scale of ETS fraud.

13. I conclude that even if there was some error of approach by the judge it was still necessary for him to go on to consider whether the appellant had provided an innocent explanation in response to the allegation, which was a matter that Mr Stanbury could not and quite rightly did not comment on. That was entirely within the realm of judicial assessment. For this reason, I find that any error of approach relating to the expert report was not material.

14. It is trite law that the production of a Home Office 'Look up tool' print out combined with the 'generic evidence' of Rebecca Collings and Peter Millington is sufficient to meet the initial evidential burden raising the possibility of fraud. In this case, the appellant also accepted that the voice recording held by ETS was not him. There was also a document to show that all 27 tests taken at Darwin's College on 17 April 2012 were deemed 'invalid' i.e. suggesting widespread concern about fraud.

15. The judge considered the appellant's evidence in response, including his witness statement, oral evidence and the expert report, which only suggested a rather remote possibility that voice recording could be substituted without a person's knowledge. The judge's assessment of the appellant as a witness was a key aspect of the decision. The judge gave a series of detailed reasons for rejecting the appellant's evidence in response. He concluded that there were inconsistencies in the appellant's evidence about how he booked the test. Other aspects of his account of how he chose and travelled to the test centre with the assistance of a friend lacked detail. The judge also found that there was a material discrepancy in the appellant's evidence as to how

many people sat the test. In assessing whether the appellant's evidence was credible, he also took into account the fact that the appellant admitted that he did not disclose the fact that he left the UK in 2014 and claimed asylum in Ireland before being removed by the Irish authorities in the application form.

16. The grounds make three points in relation to these findings, but none disclose a material error of law in the judge's approach. The first point asserts that the judge mischaracterised the appellant's evidence relating to the arrangements made to book the test. The wording in the appellant's witness statement at [8] was vague. Even if he did not mean that he booked the test by telephone, it was open to the judge to find that it was implausible that the appellant would go to the trouble of travelling to Manchester to book the test directly when on his own evidence he had been given the telephone number for the test centre. The second point makes a general assertion that the judge failed to consider alternative explanations as to why the appellant might book the test in person but does not refer to any evidence before the First-tier Tribunal that would have made any material difference to the judge's findings. The third point makes a general assertion that the judge failed to consider how the passage of time might have affected the accuracy of the appellant's evidence without particularising the point any further. One of the key inconsistencies identified by the judge related to the discrepancy in the number of people who sat the test. Although it is obvious that a person's memory might fade over time, this key discrepancy was between evidence given in the appellant's witness statement, signed on 30 August 2019, and his oral evidence, given only eight weeks later on 04 November 2019. Given the marked difference between the appellant's initial recollection that there were only 4-5 people in the room and his oral evidence that there were 35-40 people it was open to the judge to place weight on inconsistencies in recent accounts.

17. Having rejected the credibility of the appellant's explanation in response to the allegations I conclude that it was open to the judge to find that the respondent's evidence showed on the balance of probabilities that the test result was likely to have been obtained by fraud and was not the result of an innocent error on the part of the test centre as suggested by the appellant . For these reasons I conclude that the judge's findings relating to the TOEIC issue did not involve the making of a material error of law.

Article 8 assessment

18. The grounds relating to the judge's approach to the Article 8 assessment have greater force. I am satisfied that the judge erred in his assessment of the diagnosis given by a qualified Consultant Clinical Psychologist, mischaracterised aspects of the expert's opinion, failed to take into account relevant matters arising from the report, and his partners long history of neglect and abuse. These errors of law undermine the findings relating to the assessment of whether there were 'insurmountable obstacles' to the couple continuing their family life in Pakistan for the purpose of paragraph EX.1 of Appendix FM of the immigration rules and the overall balancing exercise under Article 8 of the European Convention.

19. At [70] the judge stated that Dr Morrison found that the appellant's partner presented with symptoms of depression that met the diagnostic criteria for Major Depressive Episode. At section 5 of the report Dr Morrison stated that she "presented with a number of symptoms of depression including depressed mood, lack of interest in pleasurable activities, suicidal ideation and poor concentration." At section 7 the report states that Dr Morrison completed the Hospital Anxiety and Depression Scale (HADS), which "is used as a source of information in the diagnostic process." Dr Morrison said that HADS has been researched extensively and proven as a reliable and valid measure of symptoms of anxiety and depression. Dr Morrison recorded that the appellant's partner scored 12/21 for depression. A score of over 11 indicated "significant symptoms".

20. The judge did not acknowledge Dr Morrison's expertise to diagnose Major Depressive Disorder. Instead, at [71] he appeared to embark on his own assessment of the diagnosis with reference to the diagnostic criteria appended to the report. He noted that according to the diagnostic criteria for Major Depressive Episode at least five or more symptoms are needed. He appeared to reject the doctor's diagnosis on the basis that five or more symptoms had not been listed in the body of the report. Given that Dr Morrison is an expert Consultant Clinical Psychologist who is clearly qualified to make a mental health diagnosis, and confirmed that he had carried out the relevant diagnostic tests, it was not open to the judge to suggest that the diagnosis was not reliable by reference to his own observations of the diagnostic criteria. There is no evidence to suggest that the judge has any medical expertise. Dr Morrison's reference to a number of symptoms "including" three examples did not suggest an exhaustive list. The doctor made clear that he had conducted the relevant diagnostic tests. In the circumstances, the fact that Dr Morrison had not listed five diagnostic criteria in the report was insufficient reason to reject the diagnosis of a qualified medical professional.

21. There is some force in the submission that the judge also mischaracterised Dr Morrison's opinion that the appellant's partner was unlikely to be able to function in Pakistan to some extent and failed to place his opinion in the context of other relevant evidence. Dr Morrison gave his opinion in the context of her long-term mental health difficulties arising from childhood neglect, abuse and subsequent domestic violence. This was consistent with the long summary of her medical notes appended to the report, which showed that the appellant's partner had found a measure of stability in her life having left her husband after many years of domestic abuse. Dr Morrison noted that, even with the support and treatment available to her in the UK, the appellant's partner was recorded as having attempted to commit suicide on three occasions. It is in light of this background that Dr Morrison concluded that separation from the appellant was likely to lead to a "significant deterioration in her mental health" if he was removed to Pakistan. Although Dr Morrison could have provided a more detailed explanation as to why he considered it unlikely that the appellant's partner would be able to "function in Pakistan", and it was open to the judge to observe that he did not indicate any particular knowledge of the conditions she might face, when his opinion is read in context with his other comments and the background relating to past abuse, it becomes clear that Dr

Morrison considered that any destabilisation of the fragile equilibrium she had established, whether by separation from the appellant or relocating to Pakistan, would lead to a significant deterioration in her mental health and an increased risk of suicidal ideation.

22. Mr McVeety acknowledged that he was on weaker ground in relation to the Article 8 points. He shared concerns that the judge purported to express greater knowledge than the medical expert, but submitted that any error of approach was not material. I disagree. The diagnosis of a qualified Consultant Clinical Psychologist should have been given appropriate weight and Dr Morrison's opinion about the effect of separation or relocation to Pakistan should have been put in proper context. The issue of suicide risk was not considered at all. These failures were sufficiently serious to affect the evaluative assessment of whether there were likely to be 'insurmountable obstacles' to the couple continuing their family life in Pakistan and the overall balancing exercise under Article 8.

23. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of an error of law in relation to the allegation of dishonesty arising from the TOEIC certificate. That finding shall stand. However, the First-tier Tribunal decision involved the making of errors of law in assessing the evidence relating to the vulnerability of the appellant's partner which were material to a proper assessment of Article 8. That aspect of the decision is set aside and will need to be remade.

24. I find that this case is not suitable for remittal to the First-tier Tribunal given that some of the findings have been preserved and only part of the decision needs to be remade. It is appropriate to remake the decision in the Upper Tribunal. My preliminary view is that the decision could be remake without an oral hearing based on written submissions and any up to date evidence. The genuine nature of the relationship is not in dispute. The case hinges on an evaluative assessment of whether there would be 'insurmountable obstacles' to the couple continuing their family life in Pakistan and/or where a fair balance should be struck for the purpose of Article 8.

DIRECTIONS

25. **The parties** shall have regard to the Presidential Guidance Note: No 1 2020: Arrangements During the Covid-19 Pandemic when complying with these directions.

26. **If there is an objection to the decision being remade without a hearing**, the parties shall file written reasons for any objection within 7 days of the date this decision is sent and making submissions on the mode for remaking i.e. remote or face to face hearing.

27. **If there is no objection to the decision being remade without a hearing**, the following directions apply.

(i) **The appellant** shall file on the Upper Tribunal and serve on the respondent an electronic copy of any further evidence relied upon and written submissions relating to remaking within 21 days of the date this decision is sent.

(ii) **The respondent** shall file written submissions within 21 days of the date the appellant files his written submissions.

(iii) **The appellant** shall file any response within 7 days of the date the respondent files her written submissions.

(iv) **The Upper Tribunal** will consider the written submissions, and subject to any submissions made about the mode of hearing, shall then decide the case without a hearing.

28. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.

29. Documents and submissions filed in response to this decision may be sent by, or attached to, an email to [email] using the Tribunal's reference number as the subject line. Attachments must not exceed 15 MB.

30. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of this decision.

DECISION

The First-tier Tribunal decision involved the making of errors of law

The decision will be remade in the Upper Tribunal

Signed M. Canavan Date 10 November 2020
Upper Tribunal Judge Canavan