IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: **UI-2023-005184**

First tier number: HU/56275/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 27th of February 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

AFTAB ALI SHAH
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Holmes
For the Respondent: Mr McVeety, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 8 January 2024

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, appealed to the First-tier Tribunal (Judge Alis) against the respondent's decision dated 25 August 2022 to refuse his protection and human rights claim. The First-tier Tribunal dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

   Granting permission, Judge Moon wrote:

   1. The grounds are in time and there are two broad grounds of appeal. The first is that the Judge placed too much weight on findings made at a previous hearing in relation to a claimed relationship and insufficient weight on evidence provided since that hearing. The second broad ground of appeal is that the balancing exercise is insufficient because the Judge did not take all

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of the circumstances including the appellant's wish to have a child with his claimed partner into account.

2. This appeal concerns the appellant's claim for asylum and humanitarian protection on the basis that he would be at risk of serious harm on return to Pakistan because of his refusal to enter into an arranged marriage and because he was previously married to a non-Muslim. His case is that he has received death threats from his family for these reasons. The appellant now claims to be in a relationship with a national of India who is a Sikh and that this relationship will not be accepted in India or in Pakistan. The second limb to the claim was that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules because there would be very significant obstacles to his reintegration into Pakistan and in the alternative, the decision amounts to a disproportionate interference with the appellant's right to a family life.
3. There is a previous decision of the First-tier Tribunal dated 28 July 2017, the previous judge decided that the relationship was one of convenience. In relation to this aspect, the Judge has clearly set out the evidence that was and was not available at the previous hearing. It is arguable that the consideration of evidence of continuing cohabitation since 2017 is inadequate.
4. The finding in relation to the relationship informed the finding that the appellant did not meet the requirements of the immigration rules and the implied finding that Article 8 is not engaged meaning that no balancing exercise was undertaken.
5. The grounds of appeal do not challenge the decision made in relation to the protection claim and permission is granted in relation to the challenges to the Human Rights aspects of the appeal only.

2. Mr Holmes, for the appellant, submitted that the judge had perpetrated four legal errors. I shall deal with each of these in turn.

3. First, the appellant submits that the judge gave no reasons for attaching no weight to the evidence of the appellant's witness who gave evidence at the hearing. The witness is a personal friend of the appellant and his former employer (I note the the appellant has the right to work in the United Kingdom). The judge discusses the witness's evidence at [19] and [35]:

 19. Mr Redican adopted his statement and gave oral evidence. He knew the Appellant and his wife and stated they met whilst working for him. He believed they began their relationship around 12 months after she began work. He stated they were a strong couple who had had IVF treatment and he was satisfied they were in a genuine and subsisting relationship. He saw them outside of work, as a couple, every one or two months.

 …

 35. Their witness at this hearing was a personal friend who during the hearing was mistaken about dates albeit I accept the events he was describing happened over ten years ago and I therefore did not find his mistake on the dates as material. He gave evidence they were a couple, but he could have given this evidence at the Appellant's previous appeal in July 2017. His evidence

did not on its own persuade me to depart from the Tribunal's previous decision about the Appellant and his wife's relationship.

4. The appellant's previous appeal had been dismissed in 2017. Judge Alis summarised the findings of the previous Tribunal at [28]:

   The Appellant and Sponsor have both had appeals considered by the First-Tribunal on 28 July 2017. In a decision promulgated on 1 August 2017 Judge Durance made the following findings which remain relevant today:

   i. The Appellant was not a credible witness.
   ii. He had provided documents (FIR) from Pakistan that were false.
   iii. He was not at risk of persecution from either his own family or the Taliban.
   iv. He would not be at risk of harm on account of his inter-racial relationship.
   v. There were no obstacles to his return to Pakistan.
   vi. Ms Kaur was not a credible witness and concluded that she had little knowledge of her former husband, Mr Rat. He had been paid money to marry her.
   vii. Ms Kaur had not been subjected to domestic violence.
   viii. Ms Kaur and the Appellant had had some form of a relationship since 2013. Their relationship had been conceived by them as they wished to remain in the United Kingdom at all costs. In his interview, the Appellant claimed that he and Ms Kaur were not in a relationship and the Tribunal rejected his claim that he had misunderstood the question. His failure to mention the relationship undermined his credibility on this issue.
   ix. Ms Kaur faced no risk on return to India because of her relationship with the Appellant. Her claim was based upon economic betterment and they had devised this claim to bolster a failed asylum claim.

5. Both parties accept that the Judge Alis was entitled to begin his analysis with those previous findings (Devasseelan [2002] UKIAT 00702*).

6. I find that the judge at [35] has, in Mr McVeety's words, 'done enough' as regards the witness's evidence. There was no explanation as to why the witness had given evidence for the appellant in 2017, a factor limiting the weight which should now be given to his evidence under *Devasseelan* principles. The witness gave his opinion that the appellant and his wife were in a relationship and that they had undergone IVF treatment. The first assertion would, in any event, attract limited weight; as a friend of the appellant and his wife, it would have been surprising if the witness had offered a different opinion. The witness's evidence regarding IVF had presumably been passed to the witness by the appellant and his wife and was offered by them in any event. Moreover, the judge did not attach no weight to the witness's evidence; rather, the judge found, in effect, that the evidence repeated that of the appellant and his wife but did not help to discharge the burden of proof given the limited weight attaching to it. As the judge wrote at [39] 'the evidence

from the witness adds little to what the Tribunal already had ascertained.' The judge's treatment of the witness's evidence was, in my opinion, wholly adequate in the context of a second appeal applying *Devasseelan* principles. That starred decision provides at [4](5)] that a second judge should treat evidence that was 'not brought to the attention of the first Adjudicator, although they were relevant to the issues before him … with the greatest circumspection'. Judge Alis's treatment of the witness's evidence (he did not, for example, find that the witness's errors over dates counted against him) was rather more lenient than *Devasseelan* proposes.

7. Secondly, the appellant complains that the judge did not deal adequately with evidence that the appellant and his partner live together at the same property. A supporting letter from their landlord had not been addressed by the judge.

8. The judge does refer to the landlord's letter at [36i]; 'Letter from landlord (page 242)-this simply confirms they lived in the same property as his tenants.' The judge was not obliged to make findings on every item of evidence. His reference to it, in effect, summaries its probative effect. Given that the both Judge Alis and the previous Tribunal accepted that the appellant and his wife have 'had some form of a relationship since 2013' the fact that the couple live as tenants in the same property is not evidence of such compelling force that for the judge to conclude that they were not in a genuine relationship would inevitably be perverse. I am satisfied that the judge took the landlord's evidence into account in reaching his conclusions.

9. Thirdly, Mr Holmes submitted that the judge had failed to give adequate weight to the wife's IVF treatment a evidence showing a genuine relationship and fourthly that the judge had not had regard to all the evidence in reaching his determination of the appeal.

10. I note that the grounds of appeal [10] only refer to IVF treatment in the context of the couple being separated by the appellant's removal and not as evidence of the genuineness of the relationship. At [38] the judge wrote: 'The Appellant's wife's wish to have a child is longstanding as she enquired about this previously and <u>from what I can tell before her relationship with this Appellant. I have to ask myself whether any of this new evidence enables me to depart from the conclusive findings made by the Tribunal in July 2017.</u> [my emphasis]. In my opinion, the judge has properly placed the evidence regarding IVF in the context of all the evidence and has asked himself the correct question: Does the new evidence enable the Tribunal to reach a different conclusion from the previous Tribunal as to the nature of the couple's relationship? Mr Holmes does not submit that there could only be one (affirmative) answer to that question but only that the judge failed to consider particular items of

evidence (which, as explain above, I find he did consider) and then failed consider all the evidence holistically, which I find is exactly what the judge does at [39]. I find that the judge has reached findings which were open to him on a consideration of all the evidence and has given cogent and clear reasons for reaching those findings. Accordingly, the appeal is dismissed.

Notice of Decision

The appeal is dismissed

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 16 February 2024