IAC-FH-CK-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: HU/19135/2019 (V)**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 7 July 2021** | **On 5 August 2021** |

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**SRK (aka RSA)**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr Z Jafferji, Counsel, Direct Access
For the Respondent: Mr D Clarke, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Pakistan. His date of birth is 29 October 1962. In my decision dated 10 March 2021 I anonymised the Appellant in the light of medical evidence regarding the Appellant's health.

The Appellant's immigration history

Applications made in the name SRK

2. The Appellant's immigration history is as follows. The Appellant applied for entry clearance as a visitor on 3 September 1998. He was granted a multi-visit visa on 14 May 1999 which was valid until 14 May 2001. He was then granted a five year visa which was valid until 22 May 2006.

3. On 23 May 2001 an application was made for a six month multi-visa ("the 2001 application"). The application was refused on 24 May 2001.

4. On 27 May 2001 the Appellant left Pakistan, arriving in the UK on 30 May 2001. He returned to Pakistan on 11 November 2001. He came back to the UK on 13 October 2002. He returned to Pakistan on 11 December 2002. He came back to the United Kingdom on 13 December 2002. On 16 June 2003 he made an application for leave to remain. This application was refused on 18 July 2003. On 14 September 2003 the Appellant left the UK. On 19 September 2003 the Appellant returned to the UK on the same day his leave to enter as a visitor was cancelled.

5. On 7 October 2003 the Appellant was refused leave to enter and on 16 October 2003 directions were made for his removal to Karachi. However, the Appellant did not show for his flight on 18 March 2005. On that day he applied for settlement under the long residency Rules.

6. On 28 January 2009 he made an application for asylum. On 24 January 2010 the Appellant notified the Secretary of State that he had left the UK on 23 December 2008.

Applications made in the name RSA

7. The Appellant made an application for entry clearance on 26 November 2009 as a spouse. He was issued with a spouse visa which was valid from 31 December 2009 until March 2012. On 5 January 2010 he entered the UK. On 6 June 2011 he applied for a transfer of conditions pertaining to his leave to remain. He was issued with a transfer of conditions on 6 June 2011. The application was for a transfer of leave to remain onto a new passport as a previous passport had been lost. On 29 March 2012 he applied for settlement in the UK as the victim of domestic violence. The application was refused on 16 May 2012. On 18 May 2012 he applied for LTR as the spouse of a settled person. His application was refused on 8 March 2013. On 10 December 2013 he applied for LTR under the domestic violence concession. On 11 December 2013 he was issued with LTR outside of the Immigration Rules (IRs) until 10 March 2014.

8. On 6 March 2014 he re-applied for settlement as the victim of domestic violence. On 14 June 2014 his application was refused under paragraph 289C with reference to 289A(iv) of the IRs. The decision was reconsidered by the SSHD. On 3 November

2014 the Appellant was refused ILR under paragraph 322(1C)(iv) of the IRs; however, he was issued with LTR outside the IRs which was valid until 2 May 2017.

9. On 17 December 2014 the Appellant applied for a replacement biometric residence permit (BRP) card and this was re-issued to him on 5 January 2015. He re-entered the United Kingdom on 26 July 2016, 16 October 2016 and 20 March 2017. On 5 April 2017 the Appellant applied for LTR under a domestic violence concession. On 1 June 2017 his application was rejected. On 26 June 2017 he re-applied for settlement in the United Kingdom as the victim of domestic violence. His application was refused on 20 December 2018. The decision was maintained on administrative review on 22 May 2019. On 13 August 2019 the Appellant made an application for LTR in the UK on Article 8 ECHR grounds. This gave rise to the decision which is the subject of this appeal, namely that on 7 November 2019.

The decision of 7 November 2019

10. It is necessary for the purposes of this hearing to set out certain parts of the SSHD's decision. The Respondent refused the application on suitability grounds, the salient parts of which read as follows.

> "… Your application falls for refusal on grounds of suitability in Section S-LTR under paragraph 276ADE(1)(i) of the Immigration Rules because it is noted that you have utilised two separate identities, that of [RSA] – Pakistan – 29 October 1962, and that of [SRK] – Pakistan – 29 October 1961. This has previously been investigated by the Home Office and denied by yourself. However, in your witness statement dated 29 August 2019 you have confirmed that you have utilised both identities for the purpose of gaining entry to the United Kingdom.
>
> It is also noted from your refusal dated 20 December 2018, that Home Office records and databases show a unique fingerprint match for you, between both of these identities. Even were this not to be the case, it is noted that your image has clearly been used throughout all of the applications, that each of the applications outline that you work as a travel agent or within the travel industry and each application also bears a virtually identical signature throughout all applications in relation to both identities. Furthermore, it is details that within the Appeal Promulgation of 8 October 2004, the findings in regard to your conduct with reference to a claimed fraudulent application have also been noted. In this instance, [SRK], stated that an application for a Business Visa was not submitted by him but was instead a forgery. Paragraph 10 states, 'Two days after the appellant was issued with the 5 year Multiple Entry Visa, an application was submitted to the ECO, in his name and bearing details materially identical to his, for a business visa. That application was refused for lack of credibility/evidence that the applicant was a Hong Kong resident businessman and agent for clients desirous of purchasing property in the United Kingdom. The appellant denied that he was that applicant, claiming that it was a forgery'. The appellant was not found to be a reliable witness and his account was not accepted in relation to the claimed fraudulent application

(Paragraph 12)]. Lastly, the Immigration Officer's Explanatory Statement states, 'I am satisfied that either false representations were employed, or material facts were not disclosed for the purpose of obtaining leave' – TN3/363248 – Refusal of Leave to Enter Notice, 7 October 2003.

It was also noted on your refusal of 20 December 2018 that your complicity in the above fraud amounted to an extremely serious attack on the maintenance of effective immigration controls and the public interest more generally.

Therefore, your application is refused under Paragraphs S-LTR.1.6 and S-LTR.4.2 of Appendix FM of the Immigration Rules.

11. The Appellant appealed against the decision of the Secretary of State. I set aside the decision of Judge of the First-tier Tribunal Aziz, who dismissed the appeal. I concluded that the First-tier Tribunal had made a material error. My error of law decision reads as follows:-

> "30. I conclude that the judge made a material error. It was incumbent on him to make clear findings in respect of the Immigration Rules. This was an essential element of the proportionality assessment. The failure to make clear findings on suitability infects the decision. Ground 1 is made out. It is a material error.
>
> 31. In respect of ground 2, while I accept the judge did not consider the background evidence when concluding that the Appellant would not be able to access mental health treatment in Pakistan, I do not accept that the judge failed to properly consider the medical evidence from the Appellant's GP and the psychiatric report from Dr Hashmi. Insofar as the social worker's evidence is concerned, the judge properly engages with this at paragraphs 66 and 67. The judge made lawful and sustainable findings relating to the Appellant's circumstances in Pakistan regarding accommodation, family support and financial support on return to Pakistan. There is no challenge to these findings. The judge considered the medical evidence and the evidence of the social worker in the context of those findings. The evidence was based on the Appellant returning to Pakistan alone and without support, but the judge did not accept this to be the case. However, I accept that the issue of accessibility of mental health treatment must be considered in the context of the background evidence, which the judge did not do.
>
> 32. In respect of ground 3, I was told at the hearing that in 2014 the Secretary of State did not rely on the Appellant's previous conduct. This would accord with the decision of Judge Crawford, who found that the Appellant met the Immigration Rules insofar as victims of domestic violence are concerned save for the application of paragraph 322(1C) because of a recent conviction for driving whilst disqualified. I accept that this may be a matter to be put into the balance when assessing proportionality.
>
> 33. For the above reasons I set aside the decision of the First-tier Tribunal to dismiss the Appellant's appeal. The findings of fact made by the judge are lawful and sustainable he has been found to have knowingly used two identities and to have used deception. However, the UT will consider the

application for the suitability Rules. However proportionality must be considered. The UT will make findings in respect of suitability under the Rules and consider proportionality in the light of those findings and the availability of treatment in Pakistan in light of the CPIN.

34. The matter will be listed for a resumed hearing in the Upper Tribunal.

35. I make the following directions

(1) The Secretary of State is directed to produce the following by 20 March 2021:

(i) First-tier Tribunal Judge Jhirad's decision from 2004.

(ii) The Secretary of State's decision which was the subject of the appeal before First-tier Tribunal Judge Crawford and the decision granting leave following the appeal being allowed.

(2) If it is intended that the Upper Tribunal hear further evidence from the Appellant or any other witness, the Appellant is directed to serve and file further witness statements and make an application under Rule 15 of the 2008 Procedure Rules by 30 March 2021.

(3) If an interpreter is required, the Appellant must notify the Tribunal seven days before the resumed hearing.

(4) Both parties should be in a position to address the UT in relation to Mahmood (paras.S.LTR.1.6. & S.LTR.4.2; scope) [2020] UKUT 00376.

…"

## The Decision of the First-tier Tribunal

12. The judge made a number of findings which have been maintained. It is necessary to set out parts of my decision dated 10 March 2021 in order to appreciate which findings have been maintained and why.

"4. The judge heard evidence from the Appellant. There was evidence from the Appellant's GP and a psychiatric report prepared by Dr Hashmi. The judge also had a decision of the First-tier Tribunal allowing the Appellant's appeal in 2014 (the decision of FTTJ Crawford). The Appellant had been found to be a victim of domestic violence by Judge Crawford.

5. The judge recorded the Appellant's oral evidence. Although there was a finding by the Tribunal in 2004 (Judge Jhirad) that he had made false representations, the Appellant denied this. He accepted using two separate identities, but his evidence was that he did not intend to be dishonest. The Appellant's evidence, as recorded by the judge is that he lives alone here in the UK in council property. He has returned to Pakistan on three or four occasions in the past ten years. When he visited, he stayed at his brother's home. He is on medication for depression. He has high blood pressure, high cholesterol, and back pain.

6. The judge heard from the Appellant's sister, [K]. Her evidence was that she sees the Appellant on a regular basis, every four to six weeks. She said that he lived alone and that he is depressed. She confirmed that they have siblings in Pakistan.

7. The judge heard from the Appellant's nephew [MK]. He said that his uncle, the Appellant, cannot return to Pakistan because most of his family are now living in the UK and he is settled here. He would find it difficult to settle in Pakistan. The family here has been supporting him. However, it would be more difficult for them to continue to do so if he were to return to Pakistan.

8. There were other witnesses who gave evidence in the form of witness statements in support of the Appellant.

9. At paragraphs 50 – 53 the judge stated

> '50. What the appellant takes issue with is any intention to be dishonest or to deceive in the use of these two identities. At paragraphs 16 – 18 of his statement (pages 3 – 4 of the appellant's bundle) he provides the following explanation for why he changed his identity from [SRA] to [RSA]. He says that he met [SQ] (a British national) on 7 January 2006. They met in Southall and commenced a relationship. He explained to her at that time that he did not have legal status in the United Kingdom. In May 2008, he left Pakistan with all his travel documents. His travel documents were arranged by [SQ]. They married in Pakistan on 9 June 2008 and his new wife arranged everything for him. At this time, she strongly recommended that he change his name slightly through an agent in Pakistan to help him have a 'fresh start'. He was not aware that this would cause an offence and he did not intend to mislead any authority. That is why he began using the name [RSA]. He was advised by his former wife that as his middle name was [S], there should not be any problems. The name change was to show that as he is married, he is in a genuine relationship. It was only after he took legal advice from a solicitor did he realise that such an innocent mistake could be viewed as a fraudulent. It was never his intention to make false representations and he did not know that it was a very serious matter.
>
> 51. I find the appellant's explanations to be weak and lacking in credibility. The appellant himself recognises in this part of his statement that he has a poor immigration history. He does so when he says that he explained to [SQ] when they met in Southall in 2006 that he had no status. When he therefore made his entry clearance application in 2009, it was against that backdrop of a very poor immigration history. An immigration history which included an application being refused by the respondent because the appellant had made false representations. A finding that was upheld by the First-tier Tribunal in 2004. Any entry clearance application made in 2009 in which he disclosed his true identity would bring to surface that adverse immigration history.
>
> 52. I do not believe the appellant when he says that he only followed the advice of [SQ]. Even if I am wrong and he

presented a different identity on her say so, I do not for a moment believe he is as naïve as he is making himself out to be and that he did not think that he was doing anything wrong. Therefore, it matters not whether or not it was on the advice of [SQ] or any other party that he changed his name. The fact remains that when he changed his name from [SRA] to RSA] that was an untruth, a lie and he would have been fully aware of it. Similarly, when he changed his date of birth from 29 October 1961 to 29 October 1962, this was another untruth, another lie and he would have been fully aware of it. Given the baggage of his poor immigration history, there was clear motive on the part of the appellant in hiding his previous identity and the various explanations that he now gives about the name change (such as giving him a fresh start or showing that he was genuinely married to his partner) lack credibility and only serve to further undermine this appellant as a witness of truth.

53. Before moving on, in arriving at the above findings, I have fully taken into account the submissions of Ms Bachu on this issue. She attempted to draw a picture of the appellant being under the influence of a very controlling wife at that time. She said that the evidence for this could be found in the determination of Judge Crawford, when he heard the appellant's appeal in September 2014 and accepted that he had been a victim of domestic violence. Whilst Ms Bachu valiantly represented the appellant, I am afraid that I am not persuaded by the force of her arguments. This was not an application that was made under duress or coercion (the appellant has not suggested any such thing). Whatever may have gone on in their marriage after the appellant arrived here, I find that the appellant (whether or not it was on the advice of his former wife,) was fully aware when he made that entry clearance application in 2009 (and all subsequent applications) that in seeking to change his name and date of birth that these were untruths and that for him to now argue that he was unaware that such falsities might be interpreted as being dishonest lacks any credibility.'

10. In relation to having made false representations in 2001 the judge referred to findings of Judge Jhirad in 2004. Judge Jhirad upheld the Respondent's assertion that the Appellant had sought to make false representations. The judge applied Devaseelan [2002] UKIAT 702 finding no reasons to depart from the findings in 2004.

11. The judge found that the Appellant does not have a partner or dependent children here. She accepted that he was part of a large extended family in the UK whom he regularly visited. He lives in Birmingham and the extended family in High Wycombe. The judge said as follows in relation to the Appellant's health:

'64. Another important feature of the appellant's claim are his health issues. There is a letter from his GP dated 11 February 2020 and served separately on the Tribunal. Dr Alia Siddiqi

confirms that the appellant is taking medicine for depression and mental health issues. He also suffers from hypertension and high cholesterol. There is no evidence that he is being treated for back pain (as the appellant asserts).

65. There is a psychiatric report from Dr Salman Hashmi dated 11 February 2020. He diagnoses the appellant with symptoms of recurrent depressive disorder of a moderate to severe degree. I take into account what the report has stated and take no issue with the diagnosis.'

12. There was also evidence from a social worker before the judge. The judge considered this and stated as follows:

'66. Finally, I note that there is also a social worker's report, dated 15 January 2020 and contained at pages 13–33 of the appellant's bundle. The report has been prepared by Ms Catherine Kinyanjui. She concludes that any change to the appellant's current circumstances would present a risk to his opportunities for recovery and would impact upon his private and family life in the United Kingdom. The report places much emphasis on the domestic violence which the appellant experienced from his ex-wife and which has caused him mental distress and impacted upon his mental health. She states that it is unclear what accommodation or income would be available to the appellant should he be forced to relocate to Pakistan and this presents a risk of financial hardship. There will also be risk of deterioration in his mental health.

67. I take into account this social worker's report. However, the finding of the report are based on the information that was before her and in particular, that presented to her by the appellant. This Tribunal has to form its own independent judgement in light of the evidence before it. In this respect, there is no evidence before the Tribunal that the appellant would not be able to access mental health treatment in Pakistan. Furthermore, as my findings below indicate, the appellant does have a family support network in Pakistan and the United Kingdom to help him resettle.

13. Although the judge accepted that the Appellant had spent periods of his life in Hong Kong, he did not find him to be credible and he did not accept the evidence that he had lived in Hong Kong when he was a child and that he had only returned to Pakistan throughout his adult life as a visitor. The judge said that the Appellant is 'too unreliable a witness for me to be persuaded that he has been away from Pakistan for such a lengthy period'.

14. The judge found that the Appellant continues to have family, cultural and linguistic ties to Pakistan, noting that he gave evidence in Urdu and he accepted that he made regular visits to Pakistan in the last decade.

15. The judge referred to the evidence that the Appellant has two brothers in Pakistan who live in the same property. They have a domestic servant in the property to help them. One of the brothers has mental health problems

and the other brother is not working, however, he has several children in the United Kingdom who financially support them.

16. The judge noted the Appellant's evidence that he was being currently financially supported by his family in the UK. The judge found that there was no reason why the Appellant could not be financially supported in Pakistan in the same way as he is currently in the UK. He is supported by his UK-based family and this could continue.

17. The judge found that there is a family support network and a home for the Appellant in Pakistan. Should he be unable to find work he could be supported by his UK family as is the current position.

18. The judge noted, at paragraph 73, that the Appellant had stated in evidence that there was nothing wrong with him in respect of working. His evidence was that he felt that he would be unable to find work because of his age. However, the judge did not accept that he was so old that he would not be able to find employment.

19. The judge found as follows in respect of paragraph 276ADE:

> '75. *Paragraph 276ADE(1) of the Rules:* In light of the above findings, the application falls for refusal under the suitability requirements for the reasons set out by the respondent in the refusal letter. I find that the appellant has clearly and deliberately used two separate identities in various immigration applications that he has been making. I find that he deliberately changed his identity when making an entry clearance application in 2009 for leave to enter as a spouse.
>
> 76. I also find that there are no reasons for this Tribunal to depart from the findings of the 2004 Tribunal, which had made findings that the appellant had made false representations when seeking leave to enter in 2003. The application cannot therefore succeed under the Immigration Rules as the suitability requirements are not met.
>
> 77. However, in the alternative, I do not find that there are very significant obstacles to private life continuing in Pakistan. Even if the appellant has spent many years away from the country, he continues to have family, cultural and linguistic ties to his country of birth. He has a family support network and a home to return to in Pakistan.
>
> 78. Even if he is unable to find employment (and I do not find in his favour on this issue), he can be supported by his UK-based family. He is currently being financially maintained by them in the United Kingdom and there is no reason at all why such support cannot continue if he moved to Pakistan. As the evidence of the witnesses confirmed, he has two brothers in Pakistan who are being supported by UK-based family members and there is no reason at all why the appellant cannot be supported by the same family members who currently support him in this country.

79. I fully taken into account the appellant's mental health issues and the documentation that he submitted in support. However, there is no evidence why any treatment for his mental health, high blood pressure and high cholesterol cannot be received in Pakistan. Whilst I accept that having been in the United Kingdom for so many years, that there will be some level of hardship that he will endure, applying the case law in this area, I do not find that these hardships amount to very significant obstacles. Therefore, his appeal cannot succeed under paragraph 276ADE(1)(vi) either.'''

**The IRs**

13. The relevant IRs are as follows:-

"**Section S-LTR: Suitability-leave to remain**

S-LTR.1.1. The applicant will be refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply.

…

S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.

S-LTR.4.1. The applicant may be refused on grounds of suitability if any of paragraphs S-LTR.4.2. to S-LTR.4.5. apply.

S-LTR.4.2. The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim; or did so in order to obtain from the Secretary of State or a third party a document required to support such an application or claim (whether or not the application or claim was successful).

…"

**Mahmood**

14. Both parties made submissions in relation to Mahmood, the head note of which reads as follows:-

*"1. Paragraph S-LTR.1.6. of Appendix FM does not cover the use of false representations or a failure to disclose material facts in an application for leave to remain or in a previous application for immigration status.*

*2. Paragraph S-LTR.4.2. of Appendix FM is disjunctive with two independent clauses. The Home Office is consequently obliged to plead and reason her exercise of discretion to refuse an application for leave to remain based on one or both of those clauses.*

3. *The natural meaning of the first clause in paragraph S-LTR.4.2 requires that the false representation or the failure to disclose any material fact must have been made in support of a previous application and not be peripheral to that application.*

4. *The use of the words 'required to support' in the second clause in paragraph S-LTR.4.2 confirms a compulsory element to the use of the document(s) within the application or claim process, and the obtaining of the document(s) must be for the purposes of the immigration application or claim."*

15. The UT stated as follows in the main body of the decision:-

"*i) Disjunctive nature*

77. The exercise of refusal on suitability grounds under this paragraph is discretionary in nature by application of paragraph S-LTR.4.1.

78. Paragraph S-LTR.4.2. is specific as to its scope of application and the combination of a semicolon with 'or' establishes an exclusive sense to the rule by which two independent clauses are joined, so establishing the paragraph's disjunctive nature. Mr. Jarvis accepted on behalf of the respondent that consequent to such disjunctive nature, the respondent is obliged to explain why the applicable discretion has or has not been exercised in respect to this Rule.

79. The two separate basis upon which the respondent may exercise discretion to refuse an application for leave to remain can be summarised as i) the use of false representations or a failure to disclose any material fact in a previous application and ii) the use of false representations in order to obtain a document required to support such an application. Consequent to their independent nature, the Tribunal is satisfied that reliance upon one or both of the elements must be specifically pleaded and reasoned by the respondent in her decision letter, or if upon becoming aware of further information the respondent seeks to exercise her discretion during the course of the subsequent appeal process it should be by means of an addendum decision providing reasons with an appellant being given sufficient time to counter the serious nature of the underlying allegation as to conduct.

*ii) The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim'*

80. By her decision of 14 December 2017, the respondent relied upon the first independent clause of paragraph S-LTR.4.2. concerned with the applicant having made false representations in a previous application for leave to remain or a variation of leave, or in a previous human rights claim.

81. Mr. Jarvis did not seek to persuade us that a broad reading should properly be applied to this clause so as to permit any false representation arising in an earlier application, regardless of whether it was made in support of the application and regardless of whether the falsity was drawn to the respondent's attention, as being sufficient to enable the refusal of an application. We agree that Mr. Jarvis was correct not to because such approach would clearly go beyond the natural meaning of the words used in this clause of the paragraph. The use of the first 'or' in the sentence is

inclusive, bringing together two separate elements namely the making of false representations and the failure to disclose any material fact, which relate to a 'previous application'. If the intention had been to adopt the broader approach, the word 'any' would have been used in the first element, concerned with false representations, as well as in the second, concerned with failure to disclose material. Further, the plain meaning of 'has made false representations … in a previous application …' is that the false representation is made in relation to a previous application. There is no counter-indication that any false representation not made in support of the application, should be read into this clause.

82. In this matter the appellant has consistently informed the respondent that whilst he dishonestly assumed an identity and a NI number to secure employment, and used the identity as a British citizen to secure access to the NHS, he was open and honest to the respondent as to the employment and tax documents accompanying the application having been secured through the use of the false identity. We consider it important that the P60 forms, genuinely issued but the product of dishonesty as to identity, were peripheral to the application for leave to remain on long residence grounds. Their purpose was to demonstrate long residence, but it was not a requirement of the relevant rule that the appellant provide P60s. They were relied upon by the appellant to establish his long residence, a task they were capable of satisfying, and not to establish that the appellant was the person named upon them. Nor did the documents establish that the appellant enjoyed a right to work lawfully in this country or to meet any financial requirement established by any relevant paragraph of the Rules. The false representation in this matter was in providing various employers with a dishonestly assumed identity and NI number to secure employment. The employment and tax documents were produced consequent to the appellant having secured employment in his false identity. Having openly informed the respondent from the outset as to his actions, there were no false representations made on the appellant's behalf in his application that he was a British citizen called Rezaul Karim who was born in 1976, possessed a particular NI number, was lawfully entitled to work and through the course of lawful employment had earned the sums detailed by the eleven P60 forms.

83. Upon considering [17] of the decision we are satisfied that the Judge materially erred in adopting the broader interpretation of the first independent clause of paragraph S-LTR.4.2. Whilst observing that the appellant had openly declared that he assumed the identity of Mr. Karim to secure employment, the Judge considered the innate characteristic of the documents are containing 'false representations' through the deliberate dishonesty employed to secure them. Such an approach uncoupled the requirement that the false representation be made 'in a previous application' and instead broadened the use of a false representation to the securing of any document used in the previous application, even if there were clear and adequate admissions to the respondent from the outset as to the circumstances in which the documents were obtained.

84. We conclude that paragraph S-LTR.4.2. is disjunctive with two independent clauses. The respondent is consequently obliged to plead and

> reason her exercise of discretion to refuse an application for leave to remain based on one or both of those clauses. By her decision of 14 December 2017, the respondent only relied upon the first clause. The natural meaning of the first clause requires that the false representation or the failure to disclose any material fact must have been made in support of a previous application and not be peripheral to that application. The reliance upon employment and tax documents, openly confirmed to have been secured through the long-time use of a false identity, was peripheral to the previous application for leave to remain on private life grounds under paragraph 276ADE(1)(iii) and also peripheral to the earlier application for ILR on long residence grounds. The Judge therefore materially erred in finding that the suitability requirement established by the first clause of paragraph S-LTR.4.2. was applicable to the appellant."

**The Evidence**

16. The Appellant relied on the evidence that was before the First-tier Tribunal. I have set out the relevant parts of the decision of the First-tier Tribunal.

17. Mr Clarke in response to my directions submitted a letter from the Home Office to the Appellant's home address dated 29 November 2017. This letter states as follows:-

> "It would appear from our records that you have used two different identities in your dealings with the Home Office.
>
> [RSA] – 29 October 1962
>
> [SRK] – 29 October 1961
>
> Can you please provide an explanation as to why you have used two separate identities."

There is a letter from the Home Office to the Appellant dated 23 October 2018 in the same terms.

18. Mr Clarke also relied on a decision letter of 20 December 2018. The part of the decision specifically relied upon is the third paragraph under the heading

> Reasons for Decision
>
> Suitability

and it reads as follows:-

> "It is understood that you have utilised two separate identities, that [RSA] Pakistan – 29 October 1962 and [SRK] – Pakistan 29 October 1961. On 29 November 2017 and 23 October 2018, the Home Office contacted you and asked you about the use of the two above referred identities. On each occasion you stated that you had never used two identities and asserted that you were being confused with your brother's child, who you claim bears a similar appearance and has similar details to you.

> However, Home Office records and databases show a unique fingerprint match for you, between both of these identities. Even were this not to be the case it is noted that your image has clearly been used throughout all of the applications, that each of the applications outline that you work as a travel agent or within the travel industry and each application also bears a virtually identical signature throughout all applications in relation to both identities."

19. Neither party had been able to obtain a copy of Mr Jhirad's decision. I heard full submissions from both parties

Dr Hashmi's report of 11 February 2020

20. This report was before the First-tier Tribunal. There is no update. Dr Hashmi assessed the Appellant on two occasions. He states under the heading "Diagnosis" that the Appellant has symptoms of recurrent depressive disorder of a moderate to severe degree. He identified symptoms of depression and post-traumatic stress disorder. Under the heading Summary of Findings and Recommendations Dr Hashmi states that in his opinion the Appellant suffers from severe depression with predominant psychological, biological and cognitive symptoms though he has emotional symptoms as well as negative thinking and behaviour patterns. The symptoms included a persistent low and sad mood, impairment in attention, memory, concentration, decision-making, severe insomnia, anhedonia, loss of appetite, fatigue and tiredness, feelings of guilt and hopelessness, pessimism and loss of interest in any activities and a tendency to isolate himself and a death wish.

21. Dr Hashmi states:

> "If left to his own device, the Appellant is not likely to cope with life in general and would possibly not function well, since there would be no-one to remind him, support and guide him and motivate him. He would neglect his activities of daily living; he would probably starve himself and stay in bed all day. His self-care, hygiene and health would worsen and given his anosognosia (lack of insight into his difficulties), his vulnerability would exponentially increase."

22. Dr Hashmi goes on to state that the Appellant is not competent to understand his own best interests and that it would be difficult for him to cope and manage on his own in a new and strange environment without any consistent and appropriate support "such as what he receives from his close family in UK, he would rapidly deteriorate".

23. In Dr Hashmi's opinion the "serious mental illness is persistent and non-remitting, in spite of being on antidepressants". In his opinion the Appellant would benefit from getting long-term psychological support in terms of psychotherapy as well as a psychiatric review of medication.

24. Dr Hashmi states that there is

> "growing evidence for a trauma-based explanation of developing chronical enduring depression. There is a history of domestic violence and emotional

trauma, and he experiences nightmares and flashbacks on a regular basis, he has post-traumatic anxiety and this is likely to be complicating and aggravating factor in his chronic depression and dysfunction".

25. The conclusion drawn by Dr Hashmi is that it would not be prudent for the Appellant to change his environment and to leave his support network and available access to healthcare and therapy. The Appellant is

> "very likely to deteriorate in his symptoms and I am particularly worried about his suicidal thoughts and lack of drive in caring for himself and asking for help. He is likely to severely neglect his basic needs if detached from his current support network."

26. Under the heading "Prognosis" the doctor states as follows:-

> "When he is adherent to a suitable antidepressant medication in a therapeutic and effective dose, he is likely to gradually become more attentive, animated, interested in life and would be able to function better and think clearer.
>
> He is also likely to show modest improvements in hygiene, motivation and self-care.
>
> The negative prognostic factors that unfortunately shared a dim light on the possibility of a complete return to his once normal personality include the spectre of separation from his immediate family and the constant support they provide to him.
>
> I believe that he would deteriorate into dysfunction without regular support from his family that he has trusted and relied on for many years, I would therefore recommend that he should continue to get this vital support from his immediate family in the UK."

<u>The Country Policy and Information Note Pakistan: Medical and healthcare provisions Version 2.0 September 2020 ["the 2020 CPIN"].</u>

27. I set out the relevant parts of the 2020 CPIN relied on by the parties.

> "1. Healthcare system
>
> …
>
> 1.1.3 MedCOI noted in January 2020: 'Pakistan is ranked 154 among 195 countries in terms of accessibility and quality of healthcare.'[4]
>
> 1.3 Affordability and health insurance
>
> …
>
> 1.3.3 The MedCOI response, dated 29 January 2020, noted:
>
> > 'A project in Khyber Pakhtunkhwa and parts of Islamabad is providing 'health cards to ensure government-subsidised health insurance for poor

and needy families'. The Sehat Sahulat Program provides 'significant financial coverage, and province-wide accessibility to secondary and tertiary treatment facilities.' This model was built to align with Pakistan's commitment to introduce Universal Health Coverage (UHC) by 2030. Achieving UHC is part of Pakistan's sustainable development goals.

'In 2017 a health insurance scheme was launched in the federal capital, FATA and Punjab to provide coverage for families earning USD 2 per day or less. Families included in the scheme are entitled to an annual treatment costing USD 2,600. This can include conditions and treatments like cancer, traumas caused by accidents, burns, complications from diabetes, infections and bypass surgeries.'[14]

1.3.4 The Prime Minister's National Health Programme, known as the Sehat Sahulat Program (SSP), benefitted people living below the poverty line, persons with disabilities (residing in Azad Jammu and Kashmir, Gilgit Baltistan, Islamabad Capital Territory and Punjab) and transgender persons (across Pakistan)[15]. The SSP was described as '[A] milestone towards social welfare reforms; ensuring that the identified under-privileged citizens across the country get access to their entitled medical health care in a swift and dignified manner without any financial obligations. The SSP program's objective is to improve access of the poor population to good quality medical services, through a micro health insurance scheme.'[16]

…

1.4 Public sector

1.4.1 WHO EMRO noted in regard to the public health sector:

'Public sector health care systqqem endeavors to deliver healthcare through a three level healthcare delivery system and a range of public health interventions. The first level includes Basic Health Units (BHUs) and Rural Health Centers (RHCs) founding the fundamental of the primary healthcare model, secondary care encompassed first and second referral facilities providing acute, ambulatory and inpatient care through Tehsil Headquarter Hospitals (THQs) and District Headquarter Hospitals (DHQs) and tertiary care including teaching hospitals.

'…The numbers of doctors, dentist, nurses and LHVs [Lady health care visitors] have increased and availability of one doctor, dentist, nurse and one hospital bed versus population has gradually improved.'[22]

1.4.2 Pakistan Today, a Pakistani English-language daily newspaper, reported in January 2020 that the public sector served 30% of the population of Pakistan[23].

1.4.3 The Government of Pakistan runs the Expanded Programme on Immunisation (EPI) which 'aims to vaccinate children aged 0-15 months against ten Vaccine Preventable Diseases (VPDs) and pregnant women.'[24] See also Healthcare facilities –

**Public**

1.5 Private sector

1.5.1 WHO EMRO noted on the private sector:

> 'The private health sector constitutes a diverse group of doctors, nurses, pharmacists, traditional healers, drug vendors, as well as laboratory technicians, shopkeepers and unqualified practitioners.
>
> '…The rising population pressure on state health institutions has allowed the private sector to bridge the gap of rising demand and limited public health facilities. A number of private hospitals, clinics and diagnostic labs has increased considerably and is contributing health services in the country. Majority of private sector hospitals has sole proprietorship or a partnership model of organization. Stand-alone clinics across Pakistan are the major providers of out-patient care majority of these clinics falls in the sole proprietorship category.'[25]

1.6 Non-government organisation (NGO) provision and assistance

1.6.1 The BTI 2020 report noted:

> 'Pakistan has a vast array of associations and organizations representing the interests of different communities. These include trade unions, student unions, bar associations, peasant organizations, journalist unions and charity organizations. Welfare associations, both formal and informal, are a significant source of social support, often filling a governance vacuum or providing a social safety net. Such third-sector entities also play a prominent role in providing emergency services and health care.'[27]

1.6.2 MedCOI noted, in a response dated 29 January 2020, 'Charity hospitals may also provide free healthcare to the underprivileged. One chain of hospitals described in an article by Andalou Agency is said to provide care from the primary level up to cardiac surgery and treatment for pediatric cancer.'[28]

---

4 MedCOI, 29 January 2020

14 MedCOI, 29 January 2020

15 SSP, 'Frequently Asked Questions', nd

16 Sehat Sahulat Program, '**About the program**', nd

22 WHO EMRO, 'Pakistan Health Service Delivery', nd

23 Pakistan Today, '**Pakistan's healthcare system**', 8 January 2020

24 Government of Pakistan, '**Expanded Program on Immunization**', nd

25 WHO EMRO, 'Pakistan Health Service Delivery', nd

26 Pakistan Today, '**Pakistan's healthcare system**', 8 January 2020

27 Bertelsmann Stiftung, '**BTI Pakistan Country Report 2020**', (p13), 2020

28 MedCOI, 29 January 2020".

"4.12 Mental health

4.12.1 According to the WHO Mental Health Atlas 2017 profile for Pakistan, there were 11 psychiatric hospitals in the country, 800 psychiatric units in general hospitals and 578 residential care facilities, all offering inpatient care[99]. As per

the WHO's report, there are 3,729 outpatient mental health facilities in the country, of which 3 were for children and adolescents only[100]. There were 624 community-based (non-hospital) psychiatric outpatient facilities[101].

4.12.2 A report published in 2020 on mental healthcare in Pakistan noted:

> 'Mental healthcare is provided mostly by public health sector although there have been some recent developments in the private sector as well. Psychiatric care offered by different sectors generally highlights the influence of the British allopathic system on psychiatric care. […] There are around 400 qualified psychiatrists working in Pakistan. Most of the psychiatrists are working in urban cities although the posts of district psychiatrists have also been created throughout the country. Psychiatrists, in general, are working single handed, although major centers in the country are developing multidisciplinary services.'[102]

4.12.3 In February 2020, The News International reported on mental health and suicide:

> 'Psychological problems in Pakistan are widespread. According to one estimate, around 50 million people in Pakistan suffer from mental disorders. A range of psychiatric disorders have been reported, such as depression, substance and alcohol misuse, schizophrenia, bipolar disorder, and post-traumatic stress disorder. According to one estimate, 36 percent of Pakistanis suffer from anxiety and depression, which is often caused by strained family and friend relations, the feeling of not fitting in the society, the unstable economic and political conditions of the country giving rise to unemployment and poverty.'[103]

4.12.4 Asia Times, an international news outlet that reports on Asia, noted in February 2020, 'It is worth noting that 18 years after the enactment of the Mental Health Ordinance 2001, only three Pakistani provinces have mental-health rules in place…'[104]

4.12.5 The 2020 report on mental healthcare in Pakistan noted that mental health problems were taboo and people were reluctant to reveal a mental illness[105]. The report also stated:

> 'In Pakistani culture, it is commonplace to approach spiritual or traditional healers in cases of physical or mental illnesses. Faith healing is the traditional way of treatment for mental ailments in this culture, as people usually perceive mental illness to be the result of supernatural influences. Use of faith healers is irrespective of socio-economic factors as it usually depends on the person's belief toward spiritual healing. Faith healers are a major source of care for people with mental health problems in Pakistan, particularly for women and those with little education.'[106]

4.12.6 Similarly, The News International noted in February 2020 '[S]eeking help for psychological disorders is problematic in Pakistan. Mental illness is often associated with supernatural forces such as witchcraft, possession, and black magic. Families often hide mental illness to prevent the patient from adverse stereotyping.'[107]

4.12.7 MedCOI noted in November 2018 and May 2019 that treatment for post-traumatic stress disorder (PTSD) was available at the Combined Military

Hospital, Lahore (public facility), the Shaikh Zaid Hospital, Lahore, (private facility), Curelink Healthcare, Rawalpindi (private facility) and Karachi Psychiatric Hospital, Karachi (private facility), including:

- Inpatient, outpatient and follow-up treatment by a psychiatrist
- Inpatient, outpatient and follow-up treatment by a psychologist
- Psychiatric treatment by means of psychotherapy: other than cognitive behavioural therapy
- Psychiatric treatment of PTSD by means of cognitive behavioural therapy
- Psychiatric treatment of PTSD by means of EMDR
- Psychiatric treatment of PTSD by means of narrative exposure therapy[108] [109].

4.12.8 MedCOI noted in June 2019 that psychiatric treatment and treatment for drug addiction was available at the private facility Dost Foundation Hayatabad, Peshawar and the public facility Free Meth Drug Addict Centre Peshawar City:

- Psychiatric treatment of drug addiction in a specialized clinic (rehab.)
- Psychiatric treatment of drug addiction; inpatient/clinical care with methadone
- Psychiatric treatment of drug addiction; outpatient care
- Psychiatric treatment of drug addiction; outpatient care with methadone
- Inpatient treatment by a psychiatrist
- Outpatient treatment and follow up by a psychiatrist
- Inpatient treatment by a psychologist
- Outpatient treatment and follow up by a psychologist[110]. See also **Drug addiction**.

4.12.9 According to MedCOI, in a response dated 21 March 2020, inpatient and outpatient treatment by a psychiatrist and psychologist was available at the Aga Khan University Hospital, Karachi, and Shifa International Hospital, Islamabad (private facilities)[111]. Both facilities also provided long-term psychiatric outpatient care and clinical treatment[112].

4.12.10 According to the WHO Mental Health Atlas 2017, persons pay at least 20% towards the cost of mental health services / psychotropic medicines[113].

4.12.11 On the cost of inpatient psychiatric treatment, a MedCOI response dated 21 June 2018 noted:

> 'At the Karachi Psychiatric Hospital, a fee is charged according to the patient's ability to pay. For impoverished patients, a nominal fee or free outpatient consultations are offered. A consultation in the hospital by a senior psychiatrist, according to the online price list for 2018, is PKR 1,580 for the first visit, and PKR 1,430 for subsequent visits. For a junior psychiatrist, the costs are PKR 1,080 for the first visit and PKR 690 for subsequent visits.

> 'Inpatient daily fees ranges from PKR 2420 to PKR 3800 in a ward, to PKR 5,210 for a semi-private room. The hospital also offers private rooms from PKR 6,970 per day. The inpatient fee includes room, bed, food, psychiatric medications, doctor's fee and machine treatments.'[114]

4.12.12 The same response noted:

> '[T]he Aga Khan Hospital provides treatment for schizophrenia and accepts mustahiq [deserving] patients. Other healthcare facilities also treat under-privileged or mustahiq patients for free or at subsidised rates. Examples of such facilities are the Psychiatric Care and Rehabilitation Center in Karachi with 100 inpatient beds, funded through donations and Zakat and run by the non-profit organisation Karwan-e-Hayat Institute for Mental Health Care, and the Free Deport Line Clinic, in the regime of the Pakistan Association for Mental Health (PAMH) and funded through donations.'[115] See **Affordability and health insurance** for further information on Zakat.

---

[99] WHO, '**Mental Health Atlas 2017**', 2017
[100] WHO, '**Mental Health Atlas 2017**', 2017
[101] WHO, '**Mental Health Atlas 2017**', 2017
[102] Javed, A., et al, '**Mental healthcare in Pakistan**', (pp7-8), 2020
[103] The News, **Dispelling myths about mental health**', 16 February 2020
[104] Asia Times, **Challenges to mental health law in Pakistan**, 24 February 2020
[105] Javed, A., et al, '**Mental healthcare in Pakistan**', (p7), 2020
[106] Javed, A., et al, '**Mental healthcare in Pakistan**', (p7), 2020
[107] The News, **Dispelling myths about mental health**', 16 February 2020
[108] MedCOI, 27 November 2018
[109] MedCOI, 28 May 2019
[110] MedCOI, 29 June 2019
[111] MedCOI, 21 March 2020
[112] MedCOI, 21 March 2020
[113] WHO, '**Mental Health Atlas 2017**', 2017
[114] MedCOI, 21 June 2018
[115] MedCOI, 21 June 2018".

Submissions

28. Mr Clarke indicated at the start of the hearing that the Secretary of State no longer relied on S-LTR.1.6. However, reliance was placed on S-LTR.4.2.

29. Mr Clarke made the following submissions. It was not until 2018 that the Appellant's full immigration history came to light and his real identity ([SRK]). It is asserted that the Appellant made false representations or failed to disclose a material fact in a previous application in 2001. There was no evidence that the Secretary of State was aware of the Appellant's adverse immigration history when the matter came before Judge Crawford in 2014 which explains why at that time the SSHD did not rely on it.

30. The Appellant made an application in 2009 using a false identity in order to cover up his poor immigration history, so much has already been found by the First-tier Tribunal. Mr Clarke said that there was no oral evidence from the Appellant and no up-to-date medical evidence.

31. In relation to the burden of proof, Mr Clarke referred me to AY (Article 8 - Family life - Proportionality) Ivory Coast [2004] UKIAT 00205, specifically paragraph 22:-

> "22. If however the foregoing were wrong and the Appellant's removal would of itself constitute some interference with his Article 8.1 rights, then the question of proportionality arises. The Tribunal is guided by **[2004] UKIAT 00024 M (Croatia)*** especially at paragraph 28 and by **Razgar [2004] UKHL27**, especially at paragraph 20. In these circumstances also, however, the Tribunal concludes that the burden is on the Appellant to establish any particular difficulties for himself and his wife in each returning to the other's country. The Tribunal rejects the contention that, once it is established that there will be some interference with a Claimant's Article 8.1 rights, then it must be assumed that every potential course of action for that Claimant in re-establishing family life would necessarily meet with insuperable difficulties unless such difficulties are expressly disproved by the Respondent. The Respondent has a burden upon him to prove that the removal would be proportionate, but the Respondent provisionally discharges that burden of proof by relying upon the substantial weight to be accorded to a firm and fair immigration policy. If a Claimant wishes to contend that the facts of his particular case mean that his removal from the United Kingdom will cause for him particularly severe difficulties then it is for him to establish on evidence the prospect that these difficulties may in fact emerge. It is not for the Respondent to disprove every possible difficulty. Accordingly upon this analysis (i.e. supposing that the question of proportionality falls to be considered, contrary to paragraph 21 above) the Tribunal concludes that the Respondent's decision to remove the Appellant to the Ivory Coast is a decision within the range of reasonable responses open to the Respondent. The Tribunal is not satisfied (and on the evidence before it cannot be satisfied) that there would be any significant difficulties either for the Appellant to join his wife and children in the Cameroon and enjoy family life there or for the Appellant's wife and children to join the Appellant in the Ivory Coast and to enjoy family life there. The Tribunal has not overlooked the Appellant's mental condition but is not satisfied that, even taking this into account, the Appellant's removal would give rise to any disproportionate interference with his family life or indeed his private life. As regards a return to the Cameroon for the Appellant's wife, she has not established any well-founded fear of persecution or Article 3 infringing treatment there. The fact that the Appellant's wife has many (if not all) of her members of her family in the United Kingdom is not a matter of any significant weight bearing in mind her own evidence that she is substantially estranged from them. So far as concerns a return to the Ivory Coast, the Adjudicator has found the Appellant has no well-founded fear of ill-treatment there."

32. It was open to the Appellant to make an application under the domestic violence provisions of Appendix FM, however, he has not done so. There were no very significant obstacles to integration. Mr Clarke referred to the preserved findings.

33. In respect of the decision letter, S-LTR.4.2 was pleaded. The provision is set out in its entirety therein. The Appellant accepts in his witness statement that he made an application using a false identity in 2009. Mr Clarke relied on the findings of the First-tier Tribunal, specifically those at paragraphs 57 and 58 in respect of the application made in 2001. In any event, there was no challenge to Judge Jhirad's findings. The Appellant made an application in 2001 on the basis that he was a Hong Kong resident business person. The fact that he pretended to be a business person from Hong Kong speaks directly to the wording of the relevant paragraph. It is clear that the Appellant would not be in the UK, had the Secretary of State been aware of the fraud in 2001 he would not have been granted leave in 2009.

34. The case of Mahmood can be distinguished. The Appellant in that case relied on false ID in order to work. He did not rely on a false ID when making an application to the SSHD. He drew my attention to the Appellant's immigration history, specifically that there were directions for him to be removed in 2005. However, he did not turn up for the flight. He then made an application for settlement.

35. Mr Clarke said it is not apparent from the evidence what, if any, medical treatment is needed by the Appellant because the medical evidence is out of date. The Appellant has family in Pakistan. There is no evidence he would not be able to access medical treatment. It is clear that the Appellant cannot meet the IRs. There are no very significant obstacles. He drew my attention to 2020 CPIN, specifically at para 4.12 and the availability of private rooms and the availability of medication.

36. The Appellant has sought to circumvent the law and significant weight should be attached to this. He cannot meet the IRs. The fact that he may be able to speak English and that he is supported by others whilst here in the UK are neutral factors. Whilst there is a margin of appreciation as regards private life and the factors under s.117B of the 2002 Act, the Appellant's immigration history must carry weight in this case. There are no properly identified exceptional circumstances.

37. Mr Jafferji made full submissions. He specifically referred me to the decision of the Upper Tribunal in Mahmood, drawing my attention to similarities in the case. According to Mr Jafferji the submission made by Mr Clarke that the Appellant would not have been granted entry in 2009 had he used his own identity was not accepted. He was genuinely a spouse of a British citizen and came within the IRs. Had he used his real identity he might have faced a hurdle because of the previous application but he still nevertheless satisfies the IRs. He asked me to bear in mind that the Appellant left the UK voluntarily. He submitted that the false identity was a peripheral issue. Even if that was not accepted, his marriage was genuine and subsisting.

38. He submitted that it was curious that there were no documents available in relation to the application made in 2001. He was concerned that no-one had a copy of Judge Jhirad's decision and how it fits into S-LTR.4.2.

39. He drew my attention to the restrictive scope of the provision and urged me to be cautious. He submitted that there was nothing that clearly establishes that the SSHD was not aware of the Appellant's alternative identity in 2014 and that there was a possibility that they knew at this time or before 2018. It was difficult to see how the Secretary of State would not be aware of because of it came about from biometric data.

40. In relation to the exercise of discretion, this is not considered in the refusal letter. He drew my attention to paragraph 78 of the decision in Mahmood. The SSHD is obliged to explain why the applicable discretion has or has not been exercised.

41. There has been nothing about the Appellant's conduct since arriving in the UK with his spouse that would result in a refusal on suitability grounds. Judge Aziz accepted the consequences of domestic violence on the Appellant. I was referred to his mental health and the evidence of Dr Hashmi. Mr Jafferji drew my attention to the absence of psychiatrists in Pakistan and section 4 of the CPIN 2020. The Appellant has now been in the UK for eleven and a half years. He meets the IRs. He has spent a longer period outside Pakistan than in Pakistan. He lives predominantly in the UK. He has serious mental health problems. There is no pressing public interest to outweigh the Appellant's rights under Article 8.

Findings and Reasons

42. The First-tier Tribunal found that there are no very significant obstacles to integration, having rejected his evidence about having spent many years away from Pakistan. That finding is preserved. In any event, there was no further evidence from the Appellant.

43. The Appellant used a false representation in respect of a claim he made in 2001. He pretended to be a business man from Hong Kong. He has continuously denied he was responsible for the application; however, does not dispute the biometric date match. There is a judicial finding that he exercised deception (in 2004 by Judge Jhirad). The decision was before the First-tier Tribunal which found that there was no reason to go behind it, properly applying Devaseelan. There has been no cross challenge by the Appellant. For completeness, I would have liked to have seen Judge Jhirad's decision, but its absence does not cause me concern and there is no support for Mr Jafferji's describing the position as "curious." The false representation was made in support of an application for entry clearance. It falls squarely into the first limb of para S-LTR.4.2, properly applying the correct narrow interpretation urged in Mahmmod. The matter is clearly pleaded in the decision letter.

44. Para S-LTR 4.2 is discretionary. This is not made clear in the decision, but this is likely to be because the SSHD at that time was relying on mandatory grounds of refusal.

45. There are preserved adverse findings made against the Appellant. He is an unreliable witness. He used a false name to apply for a spousal visa in 2009. His evidence that he was under coercion was rejected. I also take into account that he communicated with the SSHD on 24 January 2010 using his real identity stating that he had left the country stating that he had left the country in 2008. However, at the date of the communication, he was residing in the United Kingdom under a different name. I have no doubt that the Appellant adopted a false identity to distance himself from the application in 2001.

46. The fact that it took some years for the SSHD to discover the truth does not mitigate the Appellant's deception. The letters from the SSHD to the Appellant establish that the deception came to light in 2017. I am satisfied that Judge Crawford was not aware of it because it was not a matter which was at the time in the SSHD's knowledge.

47. The Appellant has a poor immigration history which does not assist him. I accept that he has been found to be a victim of domestic violence. I accept he has mental health problems. However, none of this accounts for his behaviour.

48. The Appellant has a family support network in Pakistan. Although the Appellant has no partner or child here he has extended family here. He has been here for over eleven years. Article 8 (1) is engaged. He has health problems. I have taken into account Dr Hashmi's evidence. The First-tier Tribunal accepted the diagnosis. However, like the social worker, his evidence (prognosis) is based on the Appellant being on his own in Pakistan and without family support. However, this is not the case as found by the First-tier Tribunal. I accept that it is reasonably likely that the Appellant's health has not materially changed since February 2020. The Appellant was on medication and is likely to still be on medication. There was no up to date evidence that he was receiving treatment in addition to this.

49. The CPIN 2020 discloses that treatment is available, albeit it not widely. I have taken into account the part of the CPIN 2020 specifically relied on by Mr Jafferji. I note that there are only 400 psychiatrists, widespread mental health problems and there is stigma attached to mental health problems. There is , however, no evidence that the Appellant would not be able to access medication. He will have not only the physical and emotional support of his family in Pakistan, but the continued support from his family here including financial support. It was found by the First-tier Tribunal that the United Kingdom family would continue to support the Appellant.

50. Section 117(B) of the 2002 Act does not assist the Appellant. His stay has been precarious. He has been here under a false identity (created in order to distance himself from the 2001 application) since 2009. His immigration history is poor. The maintenance of effective immigration controls is in the public interest. The Appellant cannot meet the IRs. There are no very significant obstacles to integration. If there were, in this case, he would have to persuade the UT to exercise discretion in his favour, and this, depending on the facts, could face him with a significant hurdle considering his poor immigration history and that he cannot meet the immigration

rules in respect of family life. Taking into account all matters and carrying out an evaluative assessment, a fair balance lies in favour of the SSHD in this case.

**Notice of Decision**

The appeal is dismissed.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Joanna McWilliam Date 22 July 2021
Upper Tribunal Judge McWilliam