Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02243/2020 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre **Remotely By Skype for Business** **On 17 December 2020**	**Decision & Reasons Promulgated** **On 27 January 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

I H
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Dieu, instructed by NLS Solicitors (Cardiff)
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

Introduction

2. The appellant is a citizen of Pakistan who was born on 12 February 1984. He claims to have arrived in the United Kingdom on 19 August 2003. On 28 June 2012, he applied for leave to remain relying upon Art 8 of the ECHR. That application was refused on 15 February 2013 with no right of appeal. Thereafter, the appellant absconded.

3. On 9 March 2017, the appellant applied for leave to remain under the 10-year route based upon private and family life. That application was refused on 16 November 2017 and certified such that there was only an out of country right of appeal.

4. On 7 December 2017, the appellant claimed asylum. That claim was refused by the Secretary of State on 6 June 2018 and his subsequent appeal was dismissed on 27 July 2018. The appellant was subsequently refused permission to appeal by the First-tier Tribunal (Judge Moore) on 8 October 2018 and by the Upper Tribunal on 21 December 2018. He became appeal rights exhausted on 8 January 2019.

5. On 15 November 2019, the appellant lodged further submissions. Those were treated by the Secretary of State as raising fresh asylum and human rights claims. On 18 February 2020, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under Art 8 of the ECHR.

The Appeal to the First-tier Tribunal

6. The appellant appealed to the First-tier Tribunal. In a determination sent on 15 July 2020, Judge Lever dismissed the appellant's appeal on all grounds. The judge, in line with the earlier findings made by the First-tier Tribunal (Judge Moore) in the appellant's earlier appeal, made an adverse credibility finding. He did not accept that the appellant's marriage, to his wife who was born a Hindu but converted to Islam, was unacceptable to his family and that he would be at risk (or would his wife) on return to Pakistan. Further, the judge found that the appellant, together with his wife and children, could go to Pakistan. It was in the children's best interests to remain with their parents and there would be no breach of Art 8 if the family returned to Pakistan.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal but, on 11 September 2020, the Upper Tribunal (UTJ Perkins) granted the appellant permission to appeal against the adverse finding in respect of Art 8 of the ECHR.

8. On 2 October 2020, the Secretary of State filed a rule 24 notice seeking to uphold the judge's decision.

9. As a result of the COVID-19 crisis, the appeal was listed for a remote hearing at the Cardiff Civil Justice Centre on 17 December 2020. I was based in court at the Cardiff

Civil Justice Centre and Mr Dieu, who represented the appellant, and Mr Howells, who represented the Secretary of State, joined the hearing remotely by Skype for Business.

10. During the course of the proceedings I pointed out to the representatives that I had been the UT judge who refused the appellant permission to appeal to the Upper Tribunal in his earlier appeal proceedings. Both representatives indicated that they had no objection to my hearing the present appeal.

The Judge's Decision

11. Before Judge Lever it was accepted that the earlier 2018 appeal decision of Judge Moore was to be taken as the starting point applying Devaseelan. In that appeal, Judge Moore had rejected the appellant's account that he claimed put him at risk from his family in Pakistan on the basis that they did not accept his marriage to an Indian national who was born a Hindu but converted to Islam. Further, Judge Moore found that it would be a proportionate interference with the appellant's Art 8 rights if he, together with his family, return to Pakistan.

12. Before Judge Lever, the appellant and his wife gave evidence. The appellant again relied upon the risk to him (and his wife) from his family in Pakistan as a result of their inter-faith marriage. The appellant relied upon a number of background documents in his appeal bundle and an expert report from Dr Panjwani dated 12 July 2019 at pages 20-44 of the appellant's bundle.

13. At para 19, the judge set out the appellant's case as follows:

> "The appellant's case in summary is that he is a Muslim from Pakistan. In the UK in about 2011 or thereabouts he met his partner who is a Hindu from India. She converted to Islam. His family rejected and threatened him when he told them that she was now his partner based on her nationality/religion and also because they had planned for him to marry his cousin. The appellant and partner now have two children and it is said cannot return to Pakistan or India".

14. The judge then, referring to Devaseelan, said this at paras 20-21:

> "20. It was agreed by both parties that the case of **Devaseelan** applies before me. To some extent that is reinforced by the fact that the first judge's decision was promulgated only two years ago and survived the onward appeal route, no error having been found. That decision is therefore my starting point. I need to consider any fresh evidence. Although the appellant and his wife have made witness statements dated 1 July 2020 they are short statements and add nothing to the original statements and evidence heard by the judge in 2018.
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> 21. There is an expert report which so far as I can see was the only new evidence upon which the Respondent decided that it amounted to fresh submissions giving rise to this right of appeal. The expert report in part relies upon the credibility of accounts given by the Appellant and wife to sustain the conclusions reached. He of course can comment upon whether the facts related by the appellant and his wife are plausible. However, plausibility does not necessarily translate into credibility. Further, much of that which is said by the expert can be found within

the country material. I have also looked at country material provided within the appellant's bundle."

15. The judge then went on to set out Judge Moore's findings in the earlier appeal at 22-23:

> "22. I have carefully examined the first judge's decision where both the appellant and his wife had the opportunity of giving evidence. They confirmed that to myself. The judge had set out in detail the facts of the appellant's claim. I note that the appellant's evidence before the first judge was that he had received a 'fatwa' against him but such only arrived as late as December 2017.
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> 23. The judge made findings on the evidence at paragraphs 28 to 40. Those findings were based on detailed analysis of the evidence and clear reasonings. I do not repeat in detail all those findings. In summary the judge found that there were substantial inconsistencies in the evidence provided by the appellant and indeed between evidence given by him and his wife. He did not find, given the multiple reasons provided, that the appellant had provided a credible account. He did not accept for a number of reasons, and in line with **Tanveer Ahmed**, that the 'fatwa' was reliable although he accepted the respondent's concession that an original document had been produced. He did not accept that the appellant's family had arranged a marriage for him with his cousin. Whilst he did not dispute the appellant's sister may have been divorced he found no nexus between that fact and the appellant's behaviour. He did not accept evidence given at the hearing for the first time that the appellant's wife had told his mother that she would be following two religions. He did not find the marriage was unacceptable to the appellant's family nor did he accept as credible the claim that two family members (uncle and cousin) had powerful connections and had threatened him. He did not find the appellant and his wife to be at risk if returned to the home area of Islamabad, but also found perhaps theoretically, in any event [there was] nothing to suggest they could not relocate elsewhere or seek adequacy of protection. In this latter respect he followed the country guidance law of **KA CG UKUT [2016]**."

16. At paras 24-25, the judge considered the expert report which, as he had identified earlier, was the new evidence upon which the appellant placed a reliance. The judge said this:

> "24. I have considered the expert report. It is reasonably lengthy. In large part it deals with generic features relating to culture, treatment of women and the police. In terms of dealing with the appellant's case a significant feature raised by the expert in respect of faith in the marriage is the existence of a fatwa. However, the judge found for multiple reasons that such document was unreliable and for separate reasons did not find that threats had been issued against the appellant by his family based upon his partnership. The expert report does not provide fresh evidence to undermine those findings. It does not engage with the reasons given by the judge in respect of his findings in terms of pointing out inconsistencies between his view on country material and the findings made by the judge. The report largely provides information within the public domain and matters which are not unfamiliar. It provides the author's views upon faith, internal relocation and the issue of effective protection. However, it does not provide any evidence to suggest that the original judge's core findings are unreliable or should be departed from. Further, I find no proper basis within that report or country material provided to depart from the country guidance case of **KA [2010]**. In terms of adequacy of protection even if such was necessary. In respect of inter-faith marriage there is evidence with the CPIN June 2020 and the earlier CIG January

> 2016 (page 141 onwards, appellant's bundle) regarding the marriage of Muslim men to Hindu women. Such marriages it acknowledges exist but the information is provided in the context of Hindu women being forcibly converted to Islam prior to the marriage. That clearly occurs. The difficulty is when the women complain about such forcible conversion. The fact that a Hindu woman is forcibly converted to Islam indicates that thereafter such a marriage from the point of view of the Islamic faith and the authorities is valid and recognisable in Pakistan. In the case before me there is no question of a forced conversion. The evidence is that the appellant's partner willingly converted to Islam over eight years ago and they now have two children, the proper inference being that those children are brought up as Muslims.
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> 25. In summary, I find no evidence to suggest that I should or need to depart from the findings of the first judge that the appellant can be returned to Pakistan without risk."

17. Accordingly, on that basis the judge rejected the appellant's international protection claim on asylum and humanitarian protection grounds. At paras 26-27, the judge considered Art 8, again dismissing the appellant's appeal on that basis:

> "26. Further, the judge had looked at the case under the Immigration Rules, and Article 8 of the ECHR and taking account of Section 55 of the Borders Act 1955 *(sic)*, namely the best interests of the children. Again, I find no fresh evidence to indicate that I should depart from his findings in respect of those matters. I find no recent case law that changes the situation. The children's best interests remain being with their parents. They are by inference Muslim with now two Muslim parents with no risk on return to Pakistan largely in Muslim country. I note as an addendum that the appellant's wife is from the Gujarat area of India which has a reasonably high proportion of Muslims.
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> 27. In summary therefore, I do not find that the appellant is entitled to international protection nor that to return himself and family to Pakistan would be a breach of his or their protected rights under the ECHR nor that such return will be a disproportionate breach of Article 8 of the ECHR."

18. Consequently, as can be seen from paras 26 to 27, the judge found that the appellant, and his family, could return to Pakistan without breaching Art 8 of the ECHR.

The Grounds

19. The appellant's grounds of appeal, upon which UTJ Perkins granted permission, are relatively brief.

20. The Grounds do not seek to challenge the judge's adverse finding in respect of the appellant's international protection claim. At para 8, it is specifically stated:

> "the Immigration Judge made findings in respect of the appellant's risk in Pakistan, as were open to him to do so, and therefore has concluded the asylum aspect of this matter."

21. Instead, paras 9-13 only challenge the judge's adverse conclusion under Art 8 of the ECHR. Paragraph 9 contends that the judge erred:

> "in that he has failed to consider the Art 8 ECHR aspect of this claim, and the practicalities of the family life continuing outside the UK".

22. Paragraphs 10-12 set out a specific challenge to the judge's findings in relation to Art 8:

> "10. It was submitted to the Tribunal that appellant could not reside in India or his wife reside in Pakistan for anything more than a three-six month period (if at all given the poor relations between Pakistan and India).
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> 11. It respectfully submitted that contrary to the refusal of permission to appeal, evidence to this affect *(sic)* was produced. It was one of a number of matters specifically addressed in the expert report. Attention was drawn to the specific paragraph during submissions.
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> 12. That being the case the family unit could not be preserved and the best interests of the children could not be met."

23. Paragraph 13 of the grounds contends that this point could not be subject to Devaseelan as it was not a point considered in the earlier appeal.

24. As will be clear, therefore, the only challenge was to Judge Lever's decision to dismiss the appeal under Art 8. Further, in that context a single point was raised, namely that the judge had failed to take into account expert evidence showing that the appellant could not reside in India and his wife could not reside in Pakistan for "anything more than a three-six month period (if at all given the poor relations between Pakistan and India)" and that therefore the family unit "could not be preserved and the best interests of the children could not be met".

25. In granting permission, UTJ Perkins referred to the expert's report and, in para 2 of his decision said this:

> "I have found little to support the contention that the appellant's wife could not get permission to settle in Pakistan. Subject to argument, Paragraph 11.18 certainly supports the Appellant's case but it might not be thought to be very weighty."

26. Although, UTJ Perkins went on, in para 3 of his decision, to grant permission on the renewed Grounds, in fact, the point he raises in para 2 is the sole point contended in the grounds to give rise to an arguable error of law.

The Submissions

27. In his submissions, Mr Dieu, on behalf of the appellant, sought to broaden out the challenge to Judge Lever's adverse decision under Art 8 of the ECHR. He submitted, in essence, that the judge had failed to take into account the expert report which showed difficulties that would be faced by the appellant's wife in Pakistan, including discrimination against women, children and societal attitudes to inter-faith marriages. The latter, he submitted, arose even though the appellant's wife had converted to Islam.

28. As regards the actual grounds, Mr Dieu accepted that the judge had not decided the appeal on the basis that the appellant and his family could return to India. The decision was restricted to their returning to Pakistan. He was unable to identify in

the expert's report any specific paragraph, mirroring what was said in para 10 of the Grounds, that the appellant's wife would only be able to reside in Pakistan for up to three-six months or, perhaps, not at all. He accepted that para 11.18, referred to by UTJ Perkins, concerned the appellant returning with his wife to India not Pakistan.

29. Mr Howells submitted that the sole ground of appeal, and upon which permission had been granted, related only to the ability of the appellant's wife to live with the appellant in Pakistan. He submitted that there was nothing in the expert's report that supported para 10 of the Grounds to suggest that a visa could not be obtained by her to live in Pakistan. Indeed, Mr Howells referred to para 11.3 of the expert's report where it was stated, that her profession and conversion to Islam was "sufficient for her to live in Pakistan with her child", even if the expert report went on to identify problems arising from discrimination, etc. if she were living there. Further, Mr Howells submitted that at para 6.3 of the expert report it was specifically accepted that she could obtain a visa where it was stated that: "… [the appellant's spouse] can follow the visa procedure to settle as [his] spouse …". Mr Howells drew my attention to footnote 20 where the Pakistan High Commission website in London was cited (accessed 10 July 2019) after that statement.

30. Mr Howells submitted that the judge had rejected the appellant's international protection claim, which included findings that the appellant (and his wife) could safely return to Pakistan. The judge's findings had not been challenged and it was clear that the judge had taken into account the expert report in reaching those findings.

Discussion

31. As I have already indicated, the grounds of appeal focus exclusively upon Art 8 and raise a single point, namely that the judge failed to take into account the expert report which demonstrated that the appellant's wife could not reside in Pakistan for anything more than a three-six month period, if at all.

32. In granting permission, UTJ Perkins appears to have misread para 11.18 of the expert report. That paragraph is in the following terms:

> "finally, [the appellant] will find it difficult to become a settled spouse of [his wife] should he return to India with her because whilst laws now remove obstacles in converting a tourist visa to a dependent visa, these do not apply to Pakistani nations *(sic)*."

33. Clearly, that would have been relevant if the judge were considering whether the appellant and his family, when removed, could live in India – the country of which the appellant's wife is a citizen. However, as Mr Dieu accepted in his submissions, that was not the judge's finding in paras 26-27 of his decision where he found that the appellant and his family could return *to Pakistan*. Paragraph 11.18 of the expert's report is not relevant to that issue. Further, as Mr Howells submitted, to the extent that the expert does deal with the family going to Pakistan, he recognises that the appellant's wife could follow the visa procedure in order to obtain entry there as his

spouse. The expert specifically recognises this in para 6.3 of his report having consulted the relevant page for spousal visas on the website of the Pakistan High Commission in London. The expert's report is, rather, concerned with the position of the appellant's wife when in Pakistan and not whether she would be able to gain entry in order to live there with the appellant.

34. It follows, therefore, that the appellant cannot succeed on the sole basis asserted in the grounds of appeal to give rise to an arguable error of law. UTJ Perkins commented in para 2 of his decision that it was "regrettable that the Grounds do not specify the relevant paragraphs that are said to support the case". Paragraph 11.18is not a paragraph that supported para 10 of the grounds insofar as it challenged the judge's (only relevant) finding that the appellant and his family could reside in Pakistan without a breach of Art 8. For these reasons, therefore, the appellant's grounds of appeal, upon which permission to appeal was granted, do not establish any error of law in the judge's decision to dismiss the appellant's appeal under Art 8 of the ECHR.

35. Mr Dieu did not seek permission to amend the grounds of appeal to include a broader challenge to the judge's decision under Art 8 to encompass what formed the majority of his oral submissions, namely that the judge had failed to take into account the expert report concerning discrimination and societal attitudes that would face the appellant's wife and children in Pakistan, not least because of the appellant's inter-faith marriage with his wife. Mr Howells did not formally object to my considering the broader challenge and made submissions inviting me to reject Mr Dieu's submissions in this regard. On that basis, I am content to deal with the broader challenge

36. Mr Dieu contended the judge had failed to recognise that there was "fresh evidence" – the expert report - that he had to consider when taking Judge Moore's earlier adverse findings, albeit in the context of the appellant's international protection claim, as a 'starting point' applying Devaseelan.

37. Whilst it is true that at para 26, when considering the appellant's Art 8 claim, Judge Lever said there was "no fresh evidence to indicate that I should depart from" the earlier judge's findings, that is not, in my judgment, a statement that implies that the judge failed to take into account the expert report. At para 21, again in the context of the international protection claim, the judge specifically noted that the expert report was the "new evidence" which had led the Secretary of State to accept that the appellant's further submissions amounted to a fresh claim. Further, in para 20, Judge Lever specifically said: "I need to consider any fresh evidence". Then, having considered Judge Moore's earlier findings, the judge did precisely that, by considering the "expert report" at para 24 of his determination.

38. I agree with Mr Howells' submission that in para 26 what the judge was saying was not that there was "no fresh evidence", but rather there was no such evidence that indicated that he should "depart" from Judge Moore's earlier findings in relation to

Art 8. That is a conclusion based upon his earlier assessment of the "fresh evidence" in the expert report.

39. While Mr Dieu sought, with his usual diligence, to invite me to treat what the expert said in his report as establishing discrimination, etc., which would be faced by the appellant's wife on return to Pakistan and that Judge Lever had not taken that into account, that submission cannot succeed in the light of para 24 of the judge's determination. The judge clearly had the expert's report well in mind. The appellant's claim that he (and his wife) was at risk from his family because of his inter-faith marriage was factually not established. The judge took into account that, on return, although there was evidence concerning the position of Hindu women, that concerned those who had forcibly been converted to Islam prior to their marriage. The appellant's wife had not been forced to convert but had done so willingly. There was undoubtedly evidence in the expert's report relevant to the plight of the appellant's wife in Pakistan. It was, however, taken into account by the judge in relation to the appellant's international protection claim and there is no reason to conclude that, two paragraphs later in his determination, the judge failed to take that evidence into account under Art 8 of the ECHR. Judge Moore had already found, in the earlier appeal, that it would be reasonable to expect the appellant, his wife and children to return to Pakistan. The appellant had not established any risk from his family due to his marriage to an Indian citizen who had converted to Islam. Having taken into account the background evidence, the judge rationally found that the family (returning as a whole) to Pakistan would be both in the children's best interests and proportionate.

40. Even, therefore, having regard to Mr Dieu's submissions which extend, without permission to amend the grounds of appeal, beyond the terms of the Grounds, Judge Lever did not err in law in reaching his adverse finding under Art 8 of the ECHR.

Decision

41. For the above reasons, the decision of the First-tier Tribunal to dismiss the appellant's appeal did not involve the making of an error of law. That decision, therefore, stands.

42. Accordingly, the appellant's appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
15 January 2021