Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10479/2019 (V)**

THE IMMIGRATION ACTS

Heard at : Field House
On : 7 May 2021

Decision & Reasons Promulgated
On : 26 May 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

FA
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Mustafa, instructed by Briton Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

2. The appellant is a national of Pakistan born on 4 July 1990. He entered the United Kingdom on 22 February 2011 with leave to enter as a student and was granted further periods of leave on the same basis. His leave was curtailed on 26 November 2014, to 30 January 2015, when his sponsor college closed down, but he remained in the UK as an

overstayer. He claimed asylum on 12 February 2019 after being served with illegal entry papers.

3. The appellant's claim was made on the basis that he was at risk of being the victim of an honour killing if he returned to Pakistan after refusing the marriage his parents had arranged for him in 2016. The appellant claimed to have had a child in the UK with his Indian partner, N, who was in a relationship with someone else at the time they met. He had moved in with her in December 2017 and they had commenced their relationship in July 2018, following which he told his family that he would not be coming home to get married and he received threats from them as a result. N's family also threatened and ousted her and she was therefore at risk if she had to return to India. N was Sikh whilst the appellant was Muslim.

4. The respondent accepted the appellant's account of his relationship, but did not accept that his family had arranged a forced marriage and did not accept his claim to have fallen out with his family. It was not accepted that he had a genuine, subjective fear of persecution in Pakistan, but in any event it was considered that he could relocate to another part of Pakistan where his family would not be able to locate him. The respondent considered that the appellant could, in the alternative, move to India with his family. The respondent concluded that there were no very significant obstacles to the appellant and his family integrating into Pakistan or India and that the appellant's removal would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by First tier Tribunal Judge Rowlands on 7 January 2020 and was dismissed in a decision promulgated on 23 January 2020. Judge Rowlands heard from the appellant and his partner, N. He set out the appellant's evidence, that he was at risk in Pakistan because of his inter-faith marriage and because he had a child out of wedlock, that he could be charged with adultery and faced animosity from his family and that it would be impossible for him to obtain a visa to reside in India. He also set out N's evidence of the support the appellant had provided for her following the break-up of a previous relationship with a Hindu man which had ended after her family had threatened them because of their different religions and sects, and had warned her ex-partner to leave her, and of the fear she felt about returning to India because her family was highly influential and had threatened to kill her.

6. The judge considered that the appellant had always intended to stay in the UK, did not accept his account of being threatened by his family and did not find him to be a credible witness. He accepted the appellant's account of his relationship but considered that the family could relocate to Pakistan or India together. He did not accept the claim that they would be unable to marry as a result of their different religions and did not consider that there was a real risk of them being punished with death as a result of having committed Zina. He concluded that they could marry or co-cohabit and live away from the appellant's family in Pakistan or alternatively that they could live together in India. The judge found that the appellant's removal would not breach his human rights under Article 3 or 8 and he accordingly dismissed the appeal on all grounds.

7. The appellant sought, and was granted, permission to appeal to the Upper Tribunal.

8. In light of the need to take precautions against the spread of Covid-19, and following directions from the Upper Tribunal and submissions made in response by both parties, the error of law matter was decided on the papers without a hearing. In a decision promulgated on 1 October 2020, I found that Judge Rowlands had materially erred in law and I set aside his decision on the following basis:

> "11. Although Upper Tribunal Judge Pitt, in granting permission, accepted that all grounds were arguable, her reason for granting permission focussed on the question of risk on return in relation to inter-faith marriages, rather than the judge's adverse credibility findings. In so far as the grounds seek to challenge the judge's adverse credibility findings, it is the case that the judge gave proper reasons for making the adverse findings that he did, at [31] and [32]. The judge had the benefit of hearing from the appellant in person and he made an assessment of credibility on the basis of the evidence as a whole, including the appellant's immigration history, the oral evidence and the documentary evidence. For the reasons properly given, the judge rejected the appellant's account as to why he did not wish to return to Pakistan and rejected his claim to have been threatened by his family and he concluded that it had always been his intention to stay in the UK. The grounds make reference to section 8 and delay in relation to the judge's credibility findings, but it is difficult to understand the point being made in that respect, and in any event that was not a matter upon which the judge based his adverse findings.
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> 12. Having found that the appellant's reason for not wishing to return to Pakistan was not because of threats from his family, the judge went on to consider the general security position for a Muslim Pakistani male with a Sikh Indian female returning to Pakistan. The grounds assert that the judge's approach was inconsistent with the background material in regard to the possibility of marrying in Pakistan and in regard to the risk of living as a couple outside a recognised marriage. However, the judge plainly had full regard to the background material in concluding that there was no risk of persecution on that basis. The judge referred to a lack of evidence to show that the couple and their child could not go to Pakistan together and to evidence within the appeal bundle showing that marriage was possible for a Muslim man and a Sikh woman (page 72). Indeed, the evidence relied upon by the appellant in his grounds, namely extracts from the Home Office Country Information and Guidance report of January 2016 (sections 3 and 7), does not contradict the judge's findings and does not show that such a marriage was not possible. What the evidence shows is that such a marriage may not be legally recognised and may thus give rise to some difficulties, particularly where the families are opposed to the marriage, but, bearing in mind that the judge rejected the appellant's account of threats from his family, it is consistent with his conclusion that there was not a risk of persecution on that basis. Likewise, the judge's finding on the risk arising from being a couple living together outside a recognised marriage is not inconsistent with the background evidence and the judge was fully and properly entitled to rely on the fact that there was no evidence of the punishment for Zina having been carried out recently in Pakistan. In the circumstances I find no merit in the assertion in the grounds, or the grant of permission, that the judge erred in his approach to the question of protection and I uphold the judge's decision in that regard.
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> 13. Having said that, I do find merit in the assertion that the judge failed to undertake a full and proper assessment of Article 8 and the question of "very

> significant obstacles to integration" in relation to the claimed difficulties faced by being in a mixed marriage in Pakistan. His findings at [40] were wholly inadequate, given the nature of the issues raised. Likewise, whilst I consider that the judge's findings on risk on return to India, albeit limited, did not give rise to any material error of law on the evidence available, it seems to me there was an inadequate assessment of the difficulties claimed by the appellant in being able to relocate there with his partner.
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> 14. For all these reasons I accept that the judge materially erred in law to the limited extent stated and that his decision must be set aside in that regard. The re-making of the decision will be limited to a determination of the issue of Article 8, in particular 'very significant obstacles to integration', in relation to removal to Pakistan and, if appropriate, in regard to the ability to relocate to India as an alternative. The appropriate course would be for the decision to be re-made in the Upper Tribunal on the basis of further submissions."

Hearing and Submissions

9. The matter then came before me for the decision to be re-made in relation to Article 8. A previous hearing listed for 12 February 2021 was adjourned at the request of the Home Office owing to the fact that they had not received a 124-paragraph expert report upon which the appellant was relying. The appellant also produced a birth certificate confirming the birth of his daughter on 7 December 2020 together with a skeleton argument from Mr Mustafa.

10. Mr Mustafa relied upon his skeleton argument, submitting that there were very significant obstacles to integration in Pakistan and India. He referred to the case of Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 and to the need for there to be a "broad evaluative judgement" made when assessing the question of integration and he took the Tribunal through the expert report of Dr Maryyum Mehmood. He submitted that the report confirmed that there was no legal status for an interfaith marriage and that it was a crime of Zina punishable by the Hudood Ordinance, with a five-year sentence and a fine, for engaging in sexual relations outside marriage. That in itself was a significant obstacle. The appellant's partner would be pressurised to convert to Islam, but there was a stigma and social taboo attached to Muslims marrying someone not originally from the same faith, even if the other party converted prior to the marriage. It was considered to be blasphemy, and thus illegal, to convert from Islam in Pakistan. Such a relationship would also attract serious repercussions from extremist Islamic groups and there would be a risk of physical assault for cohabiting outside marriage. There would also be a risk of honour-killing. It was therefore not possible for the appellant and his partner to live together in Pakistan. The same applied to India. The police would not provide protection as they were corrupt. In addition, the expert stated that it would be difficult for the appellant and his partner to obtain visas for India or Pakistan as there was a clear and historical enmity between the two countries. All of that amounted to very significant obstacles to integration or alternatively compelling circumstances outside the immigration rules.

11. Mr Kotas, in his submissions, relied upon the cases of AK & SK (Christians: risk) Pakistan (CG) [2014] UKUT 569 and SB (India) and CB (India) v Secretary of State for the

Home Department [2016] EWCA Civ 451, together with the Home Office Country Information and Guidance for January 2016, "Pakistan: Interfaith Marriage". He submitted that paragraph 276ADE(1)(vi) applied only to the appellant as his partner was not a party to the proceedings. This was a private life case and the focus was on Pakistan. The appellant had lived in Pakistan for 21 years and could re-establish himself there and build up a private life. If it was considered that the question of the appellant's partner returning with him was relevant, there were three issues to be considered, namely state persecution/ discrimination, family persecution/discrimination and societal persecution/ discrimination. With regard to the state, there was no evidence that the state sought to enforce Zina and no evidence that a sentence of imprisonment had ever been imposed. A fine would not come anywhere near impeding family or private life. The COI report focussed on the backlash from family members, which chimed with the expert's report, but there was a preserved finding that the appellant was not at risk from his family and that he could relocate to another part of Pakistan in any event. There was therefore no risk in terms of the state and the family. As for the issue of societal discrimination, the expert report made wide and unsourced generalisations. AK & SK made it clear that the main problems were for Muslim women marrying outside their faith. In a patriarchal society the appellant, as a man, would get away with more. He would be able to find employment. The expert did not say that it would be impossible for the appellant's partner to get a visa and neither was it the case that the couple could not cohabit. The couple were able to get married, albeit that their marriage may not be officially recognised. In terms of the judgment in SB and CB, there would be no "flagrant denial of rights". There was nothing approaching very significant obstacles and it could not be said that there were unjustifiably harsh consequences outside the immigration rules.

12. Mr Mustafa reiterated the points previously made in response, submitting that the test was not "flagrant denial of rights" but "very significant obstacles to integration" in Pakistan.

Discussion and Findings

13. As a starting point, it is necessary that I clarify the relevant issues arising under Article 8 which I unfortunately addressed in rather misleading terms in my earlier decision at [13] and [14] and which have since become crystallised as a result of Mr Kotas's submissions.

14. As Mr Kotas properly submitted, the appellant is not able to rely upon Appendix FM on the basis of his family life, given that it has never been claimed that his partner meets the eligibility relationship requirements and therefore, since it is the appellant alone who is the party to this appeal, the question of "very significant obstacles" in paragraph 276ADE(1)(vi) arises only in the context of his private life rather than in relation to the ability of the family as a whole to integrate into Pakistan. The only suggested obstacles to integration into Pakistan have been on the basis of the family returning there as a whole and no reasons have been provided for there to be obstacles faced by the appellant himself in integrating into his home country, aside from the issues relating to his relationship. The question of the appellant being at risk from his family has been rejected and that finding preserved and there is therefore no evidence to suggest that the appellant himself would

have any problems integrating back into the country where he lived for the majority of his life. Accordingly, the relevant issue is one outside the immigration rules, on a wider Article 8 consideration.

15. There is no evidence to show that the appellant's partner and children would be unable to relocate to Pakistan together as a family. There is no issue of the family being separated. As found by the First-tier Tribunal, the couple would be able to marry in Pakistan. Whilst such a marriage may not be accorded legal status, it could still take place. In any event there is no reason why the couple could not marry in another country such as India. The expert report referred to difficulties obtaining a visa, but as Mr Kotas submitted, there is no evidence to show that that was not possible.

16. In terms of the appellant's claim as to difficulties he and his partner would face in Pakistan, this is essentially a "foreign" case, which gives rise to the relevant question of whether or not there would be a "flagrant denial or violation of rights" in order for the UK's obligations under Article 8 to be engaged on the basis of family life. That was precisely the point made by Mr Kotas in his submissions. The case of SB, upon which he relied, directly addresses such issues. Whilst that case concerned a lesbian couple and their ability to have as open a lifestyle in India as they did in the UK and to enjoy a status having legal recognition in India, the situation was expressed at [57] as being analogous to that of couples in inter-faith relationships. The Court of Appeal decided in that case that neither the existence of laws operating against the appellants in a discriminatory manner and which did not accord legal status to their partnership, nor societal and familial discrimination was sufficient to amount to a flagrant denial of their rights and thus to engage Article 8. Accordingly, the question is whether the evidence produced by the appellant meets that elevated test and the appellant's submissions and his reliance upon the expert report of Dr Maryyum Mehmood as demonstrating very significant obstacles to integration for the family in Pakistan, or compelling circumstances giving rise to unduly harsh consequences, are therefore somewhat misplaced.

17. Turning to the expert report, I agree with Mr Kotas that the report makes generalisations without providing specific details or evidence. With regard to the reference to the offence of Zina, First-tier Tribunal Rowlands made relevant findings in that regard, concluding that there was no risk of serious harm on that basis. That finding has been preserved. The evidence now produced does not suggest otherwise and, as Mr Kotas submitted, neither is there evidence of the sentence of five years' imprisonment having recently been imposed. The expert report focusses largely on the risk to Muslim/ non-Muslim couples from their families, including the risk of honour-killing, but First-tier Tribunal Judge Rowlands did not accept the appellant's claim on that basis and there is no further evidence to undermine his conclusions in that regard. The expert report refers to stigma and social taboo and also makes generalised references to the risk of physical abuse from extremists, and it may well be that the couple face some such difficulties in Pakistan. However, as in the case of SB and CB, the evidence does not show that they would be unable to continue their family life in that country. They also have the option of living in India as an alternative. Little has been said about the best interests of the children and the focus of the appellant's claim was on the difficulties he and his partner would face in Pakistan as belonging to different faiths. In any event, as Mr Kotas submitted, there is no

evidence suggesting that the children could not access healthcare, education or other services in Pakistan. The children are very young and their best interests clearly lie in remaining with their parents, wherever that may be. There is nothing to indicate that their best interests would not be met by being with their parents in Pakistan.

18. For all of these reasons I agree with Mr Kotas that the evidence does not go anywhere near demonstrating that the appellant's removal to Pakistan would result in a flagrant denial and violation of his rights. As in the case of SB and CB I do not consider that Article 8 is even engaged on that basis, but even if it was, any interference with the appellant's private and family life must be weighed against the public interest factors under section 117B of the Nationality, Immigration and Asylum Act 2002. In accordance with section 117B(4), his private life and his relationship with his partner, formed at a time when he had no leave, should be accorded little weight. As the Court of Appeal found in SB and CB, at [77]:

> "… in the alternative I would also hold, if necessary, that, on the particular facts of this case, and even on the assumption (contrary to my conclusion) that a removal would give rise to a flagrant denial or violation of their rights to family life, such removal was nonetheless proportionate. This was a case where, having already become "extremely close friends" in India, the appellants had chosen to come to this country and to enter into a civil partnership, when their presence here was, so far as the future was concerned, necessarily precarious. There is no evidence to support any risk of violence to them on their return, or any risk of prosecution, and whilst, no doubt, the family and societal discrimination which they might encounter on their return would be unpleasant, and something which they would not experience in this country, that would not be sufficient to outweigh the need for the UK to maintain proper immigration controls in the economic interests of the country."

19. For the same reasons, and on the basis of the evidence before me and the facts of this case, I consider that the appellant's removal from the UK would not be disproportionate and would not breach his Article 8 rights. As stated in my earlier decision of 1 October 2020, Judge Rowlands' decision dismissing the appellant's protection claim is upheld. The appellant's appeal is accordingly dismissed on all grounds.

DECISION

20. The original Tribunal was found to have made an error of law in relation to the appellant's Article 8 claim and the decision was set aside on that limited basis. I re-make the decision by dismissing the appellant's appeal on all grounds.

Signed *S Kebede*
Upper Tribunal Judge Kebede Dated: 11 May 2021