



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: AA/08358/2013

**THE IMMIGRATION ACTS**

**Heard at Manchester  
On 18<sup>th</sup> November 2014**

**Determination Promulgated  
On 28<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**NASREEN BEGUM  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss R Evans of Waddell Taylor Bryan Solicitors

For the Respondent: Miss C Johnstone, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a determination of Judge of the First-tier Tribunal Birrell promulgated following a hearing on 23<sup>rd</sup> January 2014. The Appellant is a female citizen of Pakistan born 1<sup>st</sup> January 1953 who claimed asylum on 15<sup>th</sup> July 2013, having arrived in the United Kingdom as a visitor on 2<sup>nd</sup> November 2012.

2. Judge Birrell dismissed the appeal on asylum, humanitarian protection and human rights grounds.
3. The Appellant applied for permission to appeal to the Upper Tribunal, and permission was granted. At a hearing on 17<sup>th</sup> September 2014, after hearing representations from both parties, I found that the decision of the First-tier Tribunal disclosed an error on a point of law in relation to consideration of Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). Findings made by the First-tier Tribunal in relation to asylum, humanitarian protection and Article 3 were preserved and the hearing was adjourned for further evidence to be given in relation to Article 8. The grounds seeking permission to appeal, the grant of permission, and my reasons for setting aside the decision in relation to Article 8, are contained in my decision dated 18<sup>th</sup> September 2014 which was promulgated on 24<sup>th</sup> September 2014.

## **The Hearing - 18<sup>th</sup> November 2014**

### **Preliminary Issues**

4. The Appellant attended the hearing. Miss Evans advised that the Appellant would be giving evidence as would her husband, Abdul Aziz, to whom I shall refer as the spouse, and her son, Nasir Saeed.
5. Following the error of law hearing further documentation had been submitted by both parties. Neither party objected to the other submitting further evidence and it was therefore admitted. The further evidence submitted by the Respondent under cover of a letter of 6<sup>th</sup> October 2014 was the SET(F) application form submitted by the Appellant's spouse dated 21<sup>st</sup> May 2012, and application details for a visit visa application made by one of the Appellant's daughters, Naila Aziz dated 7<sup>th</sup> January 2014.
6. The further evidence submitted on behalf of the Appellant under cover of letters dated 13<sup>th</sup> and 14<sup>th</sup> November 2014, amounted to an additional witness statement by the Appellant's spouse, a witness statement from Nasir Saeed, and medical evidence in relation to the Appellant and her spouse. Miss Johnstone had not received this evidence and the hearing was therefore put back for this to be considered.
7. When the hearing resumed both representatives indicated that they were ready to proceed and there was no application for an adjournment.

### **Oral Evidence**

8. The Appellant and both witnesses gave evidence separately and all had the assistance of an interpreter, there were no difficulties in communication.
9. The Appellant adopted her witness statement dated 14<sup>th</sup> January 2014. Her spouse adopted his witness statement which is undated but contained

at pages 58 and 59 of the Appellant's bundle, and his statement dated 12<sup>th</sup> November 2014.

10. Nasir Saeed adopted his witness statement dated 12<sup>th</sup> November 2014. The Appellant and witnesses were questioned both representatives, and I recorded all questions and answers in my Record of Proceedings, and it is not necessary to reiterate them here.
11. In very brief summary the Appellant's case is that she would still be at risk if returned to Pakistan despite the findings of the First-tier Tribunal that she would not. The Appellant's spouse has been given indefinite leave to remain in this country, and Nasir Saeed is a British citizen. The Appellant and her spouse have two adult daughters and four adult sons living in the United Kingdom. One of those sons is awaiting the result of an asylum claim. They have two adult daughters living in Pakistan who they contend are in hiding.
12. The Appellant's spouse owns two houses in Pakistan and it was contended that these are unoccupied and locked up, as family members fear to live there because of the dispute with the Appellant's former son-in-law who in July 2010 shot and wounded the Appellant and her daughter, and killed the Appellant's grandson.
13. The Appellant and her spouse live alone and are looked after by their children in the United Kingdom and are dependent upon them. Both are receiving medication in the United Kingdom.
14. It was contended that contrary to the findings made by the First-tier Tribunal, the Appellant's spouse had not obtained indefinite leave to remain by misrepresentation or deception. The Appellant claimed that there would be nobody to look after her if she had to return to Pakistan and she cannot look after herself.
15. Nasir Saeed stated in his witness statement at paragraph 12;

"In Pakistan they had a very comfortable life and if they did not have a fear then they will be happy to live there. Now with what had happened and my father's health getting worse and my mother following the shooting and her everyday difficulties it is not possible for them to return".

### **The Respondent's Submissions**

16. Miss Johnstone submitted that the starting point for consideration of the appeal in relation to Article 8 should be the preserved findings of the First-tier Tribunal in which both the Appellant and her spouse were described as unimpressive witnesses and they were not found to be credible.
17. I was asked to note that following submission of the spouse's settlement application form which disclosed he had said he was separated from his wife in Pakistan and that she had refused to look after him, the Appellant and her spouse and her son, were now seeking to place the blame upon

the legal advisor who had prepared the application. I was also asked to note that when the application was made, the Appellant was in the United Kingdom and was not in Pakistan as had been indicated in the application form. I was asked to find that the advisor was not at fault in that specific detail had been submitted which could only have come from the Appellant or her family. There was a conflict between the Appellant and her spouse as to whether when they lived in Pakistan they were separated as claimed by the spouse, whereas the Appellant in answer to question 90 of her asylum interview when asked the whereabouts of her husband stated "he was with me".

18. Miss Johnstone also submitted that there was a conflict in evidence between the Appellant and her spouse, in that the Appellant in answer to questions 105-106 of her asylum interview stated that the family in Pakistan were not wealthy but not poor and had their own house and some farming land whereas the spouse had said in oral evidence that he had sold the farming land in 1993/1994.
19. I was asked to note in relation to credibility that the Appellant's spouse admitted in oral evidence that he had undertaken work in the United Kingdom in January 2013 after he had submitted his application for leave to remain as a dependant of his son Nasir Saeed.
20. Miss Johnstone submitted that the Appellant had a large extended family in Pakistan and that the visa application made by Naila Aziz on 7<sup>th</sup> January 2014 gave her address as the family home Afghan Abad and indicated that she had lived there "since long time" which conflicted with the claim made by the Appellant and Sponsor that the property was deserted because family members feared to live there.
21. I was asked to find that EX.1 of Appendix FM could not be satisfied as there were no insurmountable obstacles to family life continuing in Pakistan. One of their homes in Pakistan had eight bedrooms, and the Appellant's spouse had confirmed that he received a pension, and there was also finance available from relatives in the United Kingdom.
22. Nasir Saeed had given evidence that he had remarried and his second wife and his child both lived in Pakistan and he had visited them relatively recently and intended to do so again.
23. Miss Johnstone submitted that Article 8 should not be considered outside the rules but if it was, I was asked to take into account section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). I was asked to note the Appellant cannot speak English, and has had a precarious immigration status, and that she is not financially independent. I was asked to dismiss the appeal.

## **The Appellant's Submissions**

24. Miss Evans did not accept that the Appellant's spouse had been granted indefinite leave to remain by reason of deception or misrepresentation and pointed out that in section 3 of the application form there had been disclosure that his wife, two daughters and a son lived in Pakistan so he was not contending that he had no relatives in Pakistan. I was asked to note that since that application was made his son who is living in Pakistan had travelled to the United Kingdom and applied for asylum and therefore the Appellant and her spouse only had two daughters living in Pakistan.
25. I was asked to accept that there had been a misunderstanding and that before leaving Pakistan the Appellant and her spouse were living apart because of the injuries sustained by the Appellant but they were living in adjacent houses with the Appellant being looked after by one of her daughters and her spouse would spend most of the day with her before returning to his own home next door for the evening.
26. In relation to the visa application made by Naila Aziz, I was asked to note that she was required to give her permanent residential address, and it is the Appellant's case that she currently does not have a permanent address but is moving to different addresses within Pakistan and therefore she had given the family home as the address. Another explanation put forward on behalf of the Appellant was that Naila Aziz had given that address because it was the address on her identity card and passport. I was asked to accept that the family home was not occupied.
27. Miss Evans submitted that the Appellant's spouse had only worked in the United Kingdom for a short period of time because his son, who had been financially supporting him, had lost his job. The spouse subsequently suffered a stroke which meant he could no longer work.
28. Miss Evans submitted that EX.1 of Appendix FM should be considered and the appeal could be allowed on this basis as the Appellant has a genuine and subsisting relationship with her spouse who is settled in the United Kingdom and there would be very significant difficulties faced by the Appellant and her spouse in continuing in their family life together in Pakistan, and such difficulties could not be overcome or would entail very serious hardship.
29. I was asked to accept that both the Appellant and her spouse have medical issues and although it was not suggested that this appeal could succeed on medical grounds alone, this was a relevant consideration. Miss Evans submitted that the Appellant's spouse had been given indefinite leave to remain in this country on the basis that he did not have family in Pakistan who could support him.
30. If the appeal was not allowed with reference to EX.1, Miss Evans contended that it should be allowed with reference to Article 8 outside the Immigration Rules. I was asked to consider that the appropriate test as to whether it would be proportionate to remove the Appellant is one of reasonableness.

31. I was asked to accept that it would not be reasonable for the Appellant's spouse to accompany her back to Pakistan, and that both the Appellant and her spouse are dependent upon their children in the United Kingdom and there is no-one in Pakistan who could look after them. I was asked to take into account the medical evidence.
32. In relation to private life, Miss Evans accepted that the Appellant could not satisfy paragraph 276ADE and asked that I consider the private life of the Appellant's spouse who had always been in the United Kingdom lawfully. If the Appellant had to return to Pakistan to make an entry clearance application, this would be contrary to the principles outlined in Chikwamba [2008] UKHL 40, and the Appellant would be unlikely to succeed with such an application on financial grounds, and she would not be able to rely upon EX.1 in an entry clearance application.
33. At the conclusion of oral submissions I reserved my decision.

### **Preserved Findings**

34. The findings of the First-tier Tribunal that are preserved in relation to asylum, humanitarian protection and Article 3 are set out below;

"22. The Appellant's claim to be at risk on return to Pakistan is underpinned by two facts which are central to the narrative in this case: her daughter Naila was unhappily married and then divorced and the incident of 27<sup>th</sup> July 2010 in which the Appellant was shot and her grandson killed. These are facts which are common and consistent throughout the accounts given and supported by documentary evidence in the form of court records and medical evidence from Pakistan. I am prepared to accept that these events occurred.

23. Having accepted that they occurred I have considered whether I accept the Appellant's claim that these events put her at risk on return. Taking the Appellant's evidence in the round I find that even allowing for the lower standard of proof required, the Appellant has failed to prove the truth of the facts upon which she relies in relation to her risk on return and thus in consequence has failed to prove that she is entitled to be treated as a credible witness. It may assist if I were to summarise some of the main reasons for my finding that the Appellant has failed to prove that she is entitled to be treated as a credible witness in relation to this issue of risk on return. However my summary should not be seen as an exhaustive list for my reasons for reaching my decision. I would restate that I have taken into account the totality of the Appellant's evidence before reaching my findings. I am also required by section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to take into account as damaging the Appellant's credibility any behaviour to which the section applies and I am satisfied that much of her narrative undermines her credibility by falling into the section 8 category of behaviour.

24. I heard evidence from the Appellant and her husband about the claimed continuation of the threats. I found them both to be unimpressive witnesses in that they were vague, evasive and in Mr Aziz's case deliberately refusing to answer simple questions about whether he himself had received phone calls since he had been in the

United Kingdom or whether they had been directed at other family members. Although given the opportunity more than once to answer this simple question he gave what can only be described as an incoherent response. The Appellant was also vague and imprecise when asked to specify whether she had personally been threatened since coming to the United Kingdom. As a consequence I do not accept that the Appellant has continued to receive threats from the family of Rashid.

25. The Appellant claimed that both she and her daughter were threatened by Rashid and other family members with guns. They neither report the matter to the police nor do they claim asylum on arrival in the United Kingdom in November 2009.
26. The Appellant and her husband arrived in the United Kingdom on 1<sup>st</sup> May 2012 and did not claim asylum although she claims that she was the subject of threats against her life. The Appellant had no coherent explanation for this when cross-examined merely stating that she had thought about it. I am satisfied that she was familiar with the system having claimed asylum 20 years previously in the United Kingdom.
27. I note that the Appellant's daughter claimed asylum on the basis of largely the same facts as the Appellant except that she claimed that she also feared that the Appellant herself would force her to return to her husband. Naila's claim was refused and was not appealed and she returned to Pakistan.
28. On 1<sup>st</sup> October 2012, although claiming to be in fear for her life, the Appellant returned to Pakistan and had no coherent explanation for this when cross-examined by Mr Tan.
31. When the Appellant returned to the United Kingdom on 2<sup>nd</sup> November 2012 again she did not claim asylum. Indeed when asked by Mr Tan she confirmed that she had no intention of returning to Pakistan and yet told the Immigration Officer at Border Control that she had simply come to the United Kingdom to visit her daughter.
32. Not only did the Appellant not claim asylum but she made an application for leave on an entirely different basis, under Appendix FM and it was only when that was refused in June 2013 that the Appellant finally claimed asylum.
33. A number of the incidents described by the Appellant involve her son Yasir. He, it is alleged, is the subject of false FIRs raised at the instigation of Rashid's family. When the Appellant's hearing was adjourned it was indicated that both he and his father would give evidence and yet Yasir did not attend court and there was no explanation for his absence. I note that although a copy of the FIR raised against Yasir was produced he was able to leave Pakistan using his own passport. Therefore I am not prepared to rely on this document to show that there is any interest in Yasir arising from any complaints.
34. If I accepted that the Appellant was the subject of threats which I do not it is further suggested that the Appellant cannot be protected by the Pakistani state authorities in relation to the threats made. However, although I accept that there are issues in relation to the efficacy of the Pakistani police which are set out in the COIS, in this case even on the Appellant's account the perpetrators of the incident of 27<sup>th</sup> July 2010 were arrested, prosecuted and the main perpetrator has been sentenced to death. This does not show any unwillingness on the part of the authorities to act. Indeed on the one occasion

described by the Appellant when the police were slow to act, in relation to the complaint made in respect of Raja Qayyum in 2012 when the Appellant's son complained to a judge the matter was pursued. I note that the conviction and sentence of her grandson's murderer stands and there is no evidence before me to suggest that it has been appealed. Therefore even if I were to accept that the Appellant has been threatened, which I do not, I am satisfied that the authorities in Pakistan have shown a willingness to assist.

35. In conclusion therefore while I accept that the Appellant's son-in-law has been convicted of murdering her grandson after divorcing her daughter I do not believe that the Appellant is at risk or indeed believes herself to be at risk from him or his family members. I am satisfied that if she were threatened the authorities have shown a willingness to act in her case".

### **My Conclusions and Reasons**

35. In considering the issue of Article 8 and the Appellant's family and private life in the United Kingdom I have taken into account all the evidence placed before me together with the submissions of both representatives. If a piece of evidence is not specifically referred to, this does not mean that it has not been considered, as I have considered all the evidence in the round.
36. In considering Article 8 in relation to the Immigration Rules, which involves considering Appendix FM in relation to family life and paragraph 276ADE in relation to private life, the burden of proof is on the Appellant.
37. In relation to Article 8 outside the rules, the Appellant must show that she has established a family and/or private life and that Article 8 is engaged, and the Respondent must then show that the decision is in accordance with the law, necessary and proportionate.
38. I accept that the Appellant's spouse was granted indefinite leave to remain in the United Kingdom on 17<sup>th</sup> October 2012. The First-tier Tribunal when considering this issue did not have before it, the settlement application form which was subsequently submitted by the Respondent under cover of letter dated 6<sup>th</sup> October 2014. I accept in section 3 of that form there is a disclosure that the Appellant is in Pakistan as are her two daughters Farhat Yasmeen and Naila Aziz, and her son Yasir Saeed.
39. I am however satisfied that an accurate portrayal of the Appellant's spouse's circumstances in Pakistan was not given. In my view the application clearly indicated that the Appellant and her spouse were separated, and the application indicated that the Appellant had left her spouse and refused to look after him. There is no mention in the application of Yasir having employment in Pakistan, although the Appellant's spouse gave evidence to the First-tier Tribunal that Yasir was in fact working. The Respondent's case record indicates that the Respondent believed that the Appellant and her spouse were separated and the other children were present and settled in the United Kingdom. I am not making a finding that the Appellant's spouse committed deception,



but I am satisfied that there was a misrepresentation of the circumstances, and when indefinite leave to remain was granted the Respondent did not appreciate the correct position in Pakistan.

40. I am satisfied that the Appellant's spouse owns two properties in Pakistan and they have two daughters living in Pakistan, one of whom is married with children. I accept Nasir Saeed's evidence that the Appellant has a brother and sister in Pakistan, and her spouse two sisters.
41. I do not accept the Appellant and her spouse do not know the whereabouts of their two daughters. I find that they communicate regularly by telephone, and it is not credible that they would not know their addresses. I find that the Appellant's daughter Naila is living at the family home which is why she recorded that address in her Visa Application Form in January 2014.
42. The finding by the First-tier Tribunal that the Appellant would not be at risk if returned to Pakistan is preserved, and I also make that finding in relation to the Appellant's spouse, who would not be at risk if returned.
43. In considering Article 8 and the Appellant's family life, I must first consider Appendix FM of the Immigration Rules. I note that on 14<sup>th</sup> November 2012, shortly after arriving in the United Kingdom, the Appellant made an application for leave to remain under Appendix FM and this application was refused on 26<sup>th</sup> June 2013. The Appellant thereafter made a claim for asylum, and also placed reliance upon Article 8 of the 1950 Convention.
44. It has been acknowledged that the Appellant cannot satisfy the requirements of Appendix FM in order to be granted leave to remain either as a partner or as a dependent adult relative. It is however appropriate to consider section EX.1, and I set out below EX.1(b) and EX.2;
  - (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2 For the purpose of paragraph EX.1(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.
45. In considering whether there are insurmountable obstacles as defined above, I take into account the finding that neither the Appellant nor her partner would be at risk if returned to Pakistan. I find that both are receiving medication in the United Kingdom, but if they relocated to Pakistan the medication that they required would be available. It was not contended that this would not be the case. In oral evidence the Appellant confirmed she had previously received medical treatment including an operation in Pakistan as had her daughter. That medical treatment had

been paid for. I have considered the medical evidence which is contained in letters from Dr Helen Kavanagh dated 13<sup>th</sup> November 2014. The Appellant has iron deficiency which has been corrected by receiving iron tablets and has made a good recovery. She suffers from Vitamin D deficiency and she has been given Vitamin D capsules and the prognosis is good. The Appellant suffers abdominal pain and hip pain, but she is not having any treatment for this, and she is described as using a wheelchair for long distance.

46. The Appellant's spouse has Type 2 diabetes which is described as being well controlled by medication. He is on medication to thin his blood following a stroke and the prognosis is described as "fairly good". As with the Appellant, the spouse suffers from Vitamin D deficiency, and is receiving treatment for this, and he suffers from prostatism which he has had for some years, and had surgical treatment for this in Pakistan. The prognosis for this is described as reasonable with medication, but without any treatment is described as resulting in ongoing urinary symptoms.
47. Miss Evans in oral submissions conceded that this appeal could not succeed only on medical grounds, and I find that to be the case. Both the Appellant and her spouse would be able to access the medication that they required in Pakistan, as they have done previously. I also find that adequate accommodation would be available. The Appellant and her husband own two properties, one of which is of a substantial size. They have family members in Pakistan who would be able to offer them some assistance if required. Both the Appellant and her spouse have siblings living in Pakistan and they also have two daughters, and I do not accept that the daughters are having to move addresses.
48. The Appellant's spouse gave evidence that he receives a pension although it is not clear why this is paid, as he indicated that it was paid in the United Kingdom rather than Pakistan.
49. I find that finance would be available to the Appellant and her spouse and could be provided as it has been in the past by their children in the United Kingdom. I accept the evidence of Nasir Saeed at paragraph 12 of his witness statement when he referred to his parents having a very comfortable life in Pakistan, stating that they would be happy to live in Pakistan if they were not in fear. The Appellant in answering question 105 of her asylum interview, confirmed that while she would not describe herself as wealthy, she was not poor. In oral evidence the Appellant confirmed that they had previously owned three properties, one of which had been sold to finance the applications made for leave to remain. If funds were required it would be open to the Appellant and her spouse to sell one of the two properties they own or rent it out. I am however satisfied that even if they did not do that, adequate finance would be available for them from the United Kingdom.

50. The Appellant and her spouse currently live alone and although I accept that their adult children may call upon them, it is not a case where they require 24 hour care.
51. In conclusion I do not accept this appeal can succeed with reference to EX.1 as I do not find there are insurmountable obstacles to the Appellant's family life with her spouse continuing outside the United Kingdom.
52. In considering the Appellant's private life under the Immigration Rules, I consider paragraph 276ADE. It is conceded on her behalf that she cannot satisfy the requirements of this paragraph. I find this to be the case. The Appellant has not lived in the United Kingdom for a sufficiently long period of time to engage this paragraph, and I find that her appeal cannot succeed with reference to paragraph 276ADE(vi) because I do not find that there would be very significant obstacles to the Appellant's integration into Pakistan if she had to leave the United Kingdom.
53. Having found that this appeal cannot succeed with reference to Article 8 as contained in the Immigration Rules, I find it appropriate to consider Article 8 outside the rules having taken into account the guidance given by the Court of Appeal in paragraph 135 of MM (Lebanon) [2014] EWCA Civ 985 which is set out below:

“Where the relevant group of IRs (Immigration Rules), upon their proper construction, provide a ‘complete code’ for dealing with a person’s Convention rights in the context of a particular IR or statutory provision, such as in the case of ‘foreign criminals’, then the balancing exercise and the way the various factors are to be taken into account in an individual case must be done in accordance with that code, although references to ‘exceptional circumstances’ in the code will nonetheless entail a proportionality exercise. If the relevant group of IRs is not such a ‘complete code’ then the proportionality test will be more at large, albeit guided by the Huang tests and UK and Strasbourg case law”.

54. I conclude that the Immigration Rules that deal with deportation of foreign criminals can be regarded as a complete code, but I find that not to be the case with Appendix FM and paragraph 276ADE. I therefore consider Article 8 using the five stage approach advocated by the House of Lords in Razgar [2004] UKHL 27 which indicates that the following questions should be considered;
  - (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant’s right to respect for his private or (as the case may be) family life?
  - (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
  - (3) If so, is such interference in accordance with the law?
  - (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country,

for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

- (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?
55. The decision in Beoku-Betts [2008] UKHL 39 means that I have to consider the family lives of all members of the family, not only the Appellant's.
56. I conclude that the Appellant has established a family and private life in the United Kingdom. Her family life is with her husband. Her proposed removal will be an interference with her family and private life such as to engage Article 8.
57. I find the proposed interference is in accordance with the law, as I conclude that the Appellant cannot satisfy the Immigration Rules which set out the requirements for leave to remain in the United Kingdom.
58. I find that the proposed interference is necessary in the interests of maintaining effective immigration control, which in turn is necessary in order to protect the economic well-being of the country.
59. The main issue is whether the proposed interference is proportionate to the legitimate public end sought to be achieved. I take into account section 117B of the 2002 Act which states that the maintenance of effective immigration controls is in the public interest. It is also in the public interest and the interest of the economic well-being of the United Kingdom that a person seeking to remain in this country is able to speak English. The Appellant has not demonstrated that she can speak English.
60. It is also stated in paragraph 117B that it is in the public interest, and the interest of the economic well-being of the United Kingdom that an individual seeking to remain here is financially independent. The Appellant is not financially independent. The Appellant's spouse in his oral evidence indicated that rent was being paid on their property by the government. It is not clear whether this meant that housing benefit was received, but it was clear that it was not being paid by the Appellant and her spouse.
61. The case put on behalf of the Appellant by Miss Evans is that if there are insurmountable obstacles to family life being carried on by the Appellant and her spouse outside the United Kingdom, then the appeal should succeed under Article 8 because there is a different test, and the test is not insurmountable obstacles but a test of reasonableness.
62. Miss Evans made reference to Chikwamba and I do not find that this case can be equated with that decision. In this case it is quite clear the Appellant cannot satisfy the Immigration Rules, so she is not being required to leave the country and apply for entry clearance simply as a matter of policy. I would also point out what was stated in paragraph 33 of

Sabir [2014] UKUT 00063 when the Upper Tribunal was considering removal of a female Appellant to Pakistan;

“The likelihood or otherwise of her being able to meet the requirements of the Rules for entry clearance is not a relevant consideration - see SB (Bangladesh) v SSHD [2007] EWCA Civ 28”.

63. In considering proportionality I have taken into account all the matters that I considered and referred to above when considering EX.1 and insurmountable obstacles.

64. In my view the appropriate test when considering proportionality is that set out in paragraph 31 of VW (Uganda) [2009] EWCA Civ 5 when the Court of Appeal approved a test set out by the AIT in the following terms;

“if a removal is to be held disproportionate, what must be shown is more than a mere hardship or a mere difficulty or mere obstacle. There is a seriousness test which requires the obstacles or difficulties to go beyond matters of choice or inconvenience. I would respectfully endorse this. The question in any one case will be whether the hardship consequent on removal will go far enough beyond this baseline to make removal a disproportionate use of lawful immigration controls”.

65. In my view it is appropriate to place significant weight upon the fact that the Appellant cannot satisfy the requirements of the Immigration Rules. I remind myself of paragraph 57 of Patel and Others [2013] UKSC 72 which is set out below in part;

“57. It is important to remember that Article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State’s discretion to allow leave to remain outside the Rules, which may be unrelated to any protected human rights”.

66. I find that to remove the Appellant from the United Kingdom would not be disproportionate for the reasons given above. It would be a matter for her spouse as to whether he wished to remain in the United Kingdom, or return to Pakistan where he has lived the majority of his life. I do not find that it would be unreasonable to expect him to live in Pakistan. I find that the weight to be attached to the maintenance of effective immigration control outweighs the weight to be attached to the wish of the Appellant to remain in the United Kingdom notwithstanding that she cannot satisfy the appropriate Immigration Rules.

## **Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and was set aside. I substitute a fresh decision as follows.

I dismiss the appeal on asylum grounds.

The Appellant is not entitled to humanitarian protection.

I dismiss the appeal under the Immigration Rules.

I dismiss the appeal on human rights grounds.

**Anonymity**

The First-tier Tribunal did not make an anonymity direction. It was confirmed before the Upper Tribunal that there was no application for anonymity and I see no need to make an anonymity order.

Signed  
2014

Date            24<sup>th</sup> November

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed  
2014

Date            24<sup>th</sup> November

Deputy Upper Tribunal Judge M A Hall