



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

Appeal Number: AA/09469/2013

THE IMMIGRATION ACTS

**Heard at Newport
on 29th July 2014**

**Determination
Promulgated
On 25th November 2014**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**S F
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O'Ceallaigh instructed by Duncan Lewis Solicitors.
For the Respondent: Mr K Hibbs - Home Office Presenting Officer.

DETERMINATION AND REASONS

1. On 23rd May 2014 the Upper Tribunal heard a challenge to the determination of the First-tier Tribunal in this matter and found a material error of law had been made such that the merits of the appeal needed to be re-considered. A number of findings are preserved as follows:

- i. The Appellant's wife submitted a false document in support of an application for a visit visa.
 - ii. The Appellants wife was living at [] Lahore prior to her arrival in the United Kingdom in 2006.
 - iii. The Appellant's wife's problems with her parents, her in-laws, brother in law and Gogi's gang are all made up.
 - iv. The Appellants wife made a false claim in a false name and date of birth and had delayed her application for asylum.
 - v. The Appellants wife has made up a story which she has memorised.
 - vi. The Appellants wife's claim is a fabrication designed to gain entry to the United Kingdom.
 - vii. In relation to correspondence from Mr Anjum - the evidence is not significant and it could have been produced before Immigration Judge Britton. The evidence is not new but merely purported corroboration of matters upon which the Appellant has already been disbelieved.
2. It was accepted by the advocates that as the date of the hearing is after 28th July 2014 the provisions of section 19 Immigration Act 2014 apply to the case.
 3. The Appellant seeks protection on the basis of an alleged breach of his rights under Articles 3 and 8 ECHR if returned.

Background

4. The Appellant was born in Pakistan on 13th March 1977. He arrived in the United Kingdom with a valid visit visa on 12th May 2006 and was later joined by his wife and daughter in September 2006. The Appellant was a dependant in his wife's asylum claim which failed as the account was not accepted as being credible, as illustrated above. On 13th June 2011 the Appellant claimed asylum in his own right, which was refused, and his appeal against the refusal dismissed. Further submissions followed supported by a report written by Ms Uzma Moeen which were refused. An application for judicial review resulted in the need for the Respondent to consider the submissions further, resulting in an appealable decision being made.
5. The core of the claim is that the Appellant married out of choice and contrary to the wishes of his wife's parents. They believed she had been kidnapped and went to the Appellant's home looking for her. When he showed them the marriage certificate they became angry

and had to be forced to leave as a result of neighbours being woken by the commotion. The Appellant's wife's parents attended the following morning with the police and again were shown the marriage certificate after which her father threatened to kill the whole family. Neither the Appellant nor his wife were in the house at that time and claimed to have been warned by relatives not to return to the family home. The couple went to live with friends and the Appellant claims he went into hiding as his wife's father had obtained a fatwa that the marriage was illegal which the Appellant claims was published in a religious magazine, along with his photograph and details of the case. During Eid 2000 the Appellants wife's parent's wanted reconciliation and so he dropped his wife off at her parent's house. When he returned three days later he claims the family would not let him see her and a friend advised him that armed men were sitting in the room of her house. The Appellant claims that he was kidnapped and held for 4-5 days to try and force him to end the relationship. The Appellant also claims he agreed to their demands in order to be released. His wife's family pressurised her into divorcing him but at the court she testified against her parents and the judge made an order to allow the couple to live together.

6. Religious figures were notified that the marriage was illegal and pressurised the Appellant's parents who asked the Appellant to leave. He claims his brother had links with a known gangster named Gogi Butt. The couple left Lahore and moved to Peshawar where they stayed for approximately 18 months and where his wife gave birth to their child. The Appellant claims that during this period the situation became worse as a result of which in 2003 he filed a case to obtain a protection order from the court. He claims this resulted in the Islamic extremists who had issued the earlier fatwa becoming angry. In November 2003 the Appellant and his wife returned to Lahore and whilst his wife was in a car his brother, the gangster, and members of the latter's gang fired at the car. His wife escaped and was taken to safety but was again approach when the same men tried to grab her daughter. The couple then fled to Multan where they lived for a further 18 -24 months and where they experienced no problems. The visit visa's were obtained after which the family came to the United Kingdom.
7. The Appellant relies on his witness statement dated 8 November 2013 in which he states he corrects various alleged errors arising in the reasons for refusal letter.
8. In his oral evidence he stated his wife had only returned to her parents once after the offer of reconciliation and when asked where this was and at what address, other than stating it was the address his wife lived at prior to the marriage, he claimed not to know. The Appellant was questioned about the address his wife is said to have lived at in Lahore which was stated to be the one she lived at in 2006.

The Appellant denied this but thereafter was referred to a document on page N9 of the Respondents bundle which is a copy of an order of the Family Court in Lahore, which is described as a Suit for Maintenance, and which shows his wife's address as being [] M Road, Lahore. At page N1 is a copy of an affidavit sworn by his wife giving her address as [] A Road, Lahore. The Appellant denied going to this address and claimed the Court had taken the address from the registration card. The Appellant was asked how he received correspondence from the Court if he had not lived there to which he claims he went to the court to obtain a protection order and that the court had given him that in the protection order. It was the Appellant evidence that he and his wife only visited her in-laws once whereas the document at N16 indicates that the Appellant and his wife were allowed to visit the house 'in an ordinary manner' and that the Appellant and his wife had been visiting her parents frequently. This was denied by the Appellant. No satisfactory explanation could be offered by the Appellant in relation to this contradiction.

9. The Appellant was asked about the court order obtained in the proceedings between him and his wife, and what the terms of the order were which led to his wife returning to him, to which he claimed that his in-laws had submitted against him and his wife came to court and said things were not as they have said. Initially she was questioned and the family wanted the court to take his wife from him although his wife came to court and told the court that she lived with him happily and so the court gave her permission to live with her husband and they left court together. The Appellant was asked whether he had paid any money to his wife which he denied. When asked whether as a result of his wife returning he had to pay money to his wife or in-laws he claimed any money to pay was maintenance/spending money. The Appellant was asked whether the court ordered him to pay his wife 2000RS per calendar month which he claimed to have no recollection of despite the fact that the terms of the order to be found at page N17 show that compromise was affected between the parties as a result of which the sum of 2000RS per month was fixed as maintenance allowance for the Petitioner (the Appellant's wife) and she re-establish herself in her husband's household.
10. The Appellants own affidavit at page N3 also alleges that when the Appellant's wife went to her parents she took with her all the gold ornaments which does not appear to be the actions of a person just visiting after an indication of a desire to reconcile made by her parents.
11. The Appellant was asked about the periods of separation from his wife but claimed he could not recall how long such period was. He was therefore referred to document at page N3 of the Respondents bundle in which it is stated in an affidavit that the cause of action arose in the month of March 2000 when the Appellant's wife left him and he

requested her to return and to the fact she agreed to return a week before the date of the document which was sworn on 18th December 2000. The Appellant claimed confusion over the document and that his mind would not shed light on the matter although he agreed that he had signed the document, which was his affidavit, for the use of the court. It therefore appears at the document is genuine, there being no suggestion it is false or has been falsified, and is evidence of a separation for nine months much longer than of the Appellant suggested in his core claim. It was put to the Appellant that his claim his wife had been away for less than a month is affected by such a significant difference between the claims but he was not able to recall this or remember.

12. The Appellant was asked about the medical report which does not claim he has any problems recalling evidence, although he stated as a result of his problems sometimes his brain does not work and his memory was not the same.
13. The Appellant was asked when he was detained which he stated was by Islamic people at the same time as he went to the 'in laws'. When asked how long for he claimed it was 2 to 3 days and when asked whether he was sure if he could recall this he stated he was not saying it is true but that he was in a dark room with his eyes covered but it could have been less and could have been more. The Appellant was asked why he had not provided this information previously and again claimed not to be able to recall. It was put to the Appellant that in his answer at interview to question 64, in relation to his claim to be detained, he did not state it was by Islamic people even though he now claims to have known who they were. The Appellant accepted he did not report the matter to the police but instead went to court.
14. The Appellant claimed to no longer own his estate agency business in Lahore yet also claiming not to have sold it although he also claimed not to know who was running it. He claims not to receive income from it and not to receive any money from agricultural land, although when asked whether he owns land in his name he claimed not to know although it was in his name in the past. When pressed on the point the Appellant's response was to state that he did not know anything about land if it is in his name as he has nothing to do with it and has no income from it.
15. The Appellant was asked whether he worked at his estate agency to the point of leaving Pakistan, which he claimed he did not from the time he got married to the time of coming to the United Kingdom as he had been in hiding; although when he was asked how he was therefore able to provide evidence of payslips for his visa application he claimed his agent dealt with this and that he did not himself know what documentation had been used. This response is contradicted by evidence given in his appeal against the refusal of visit visas

(VV/*****/2005 and VV/*****/2005) by the Appellant and his wife against the refusal of entry clearance dated the 14th January 2005 where the judge who heard and allowed the appeal noticed a number of documents confirming substantial assets being available to the Appellant in Pakistan and the fact that the first appellant is a businessman who has a monthly income of 82,000 rupees, who owns agricultural land, and who is paying the cost of the trip. It is noted in paragraph 10 of the determination that the grounds of appeal claim the Appellant is running a business as a property investor in which he is a very successful businessman. The Appellant is said to belong to an agriculturalist family and has agricultural land worth 14 million rupees from which he receives a handsome income. There is no evidence of the disposal of such assets which casts further doubt on the credibility of the Appellants account.

16. The Appellant was also asked about the timing of some of the documentary evidence relied upon in newspaper articles.
17. The Appellant confirmed that prior to coming to the United Kingdom his daughter had asthma for which she received treatment in the United Kingdom by way of a spray. The Appellant claims not to be able to recall the exact period of his current separation from his wife and claimed to have last had the children the day prior to coming to court. There are three children born in November 2003, March 2008 and September 2009. The eldest child is at primary school. The Appellant claimed that he collected the children from the school but there was no evidence of that from the school or their mother. He gave evidence of travelling by bus to the school.
18. The Appellant also relies upon a number of documents which are to be found in his appeal bundle. The basis of the challenge to the determination of the First-tier Tribunal was an assertion such evidence had not been properly taken into account. These include a witness statement from a third-party indicating the Appellant sees his children, but who did not attend to give oral evidence, letters from the children's school and school reports and two items of correspondence from a Dr L, the Appellant's psychiatrist.
19. The medical report dated 6th July 2012, in the form of a letter from Dr L to the Appellant's solicitors indicates the Appellant has been diagnosed as suffering from a severe depressive illness and PTSD based upon the account he relies upon in support of his asylum claim. The Appellant is stated to be attending an outpatient clinic, on a four monthly basis for review, and receives a prescription antidepressant. It is stated his symptoms are unlikely to improve unless the threat of repatriation is removed. Dr L states that current symptoms would worsen if the Appellant were to discontinue his current treatment, which could result in feelings of hopelessness and despair and the risk of suicide could increase. A second letter from Dr L, dated November

2013, states the Appellant's presentation has changed very little since that time and that his treatment continues as before. It is stated the S. W. C. C. Mental Health Team do not seem to be able to help him any more medically and refer to the possibility of improvement if the threat of repatriation was removed.

20. In addition to the court documents referred to above there is at pages B27 to 28 of the Appellants bundle the document stated to be a First Information Report (FIR) although it appears from the bundle that B27 is an un-translated document and B28 further copy of an order from the High Court in Lahore in relation to the proceedings issued by the Appellant's wife. The Appellant also relies on a report written by Ms Uzma Moeen. One of the matters the expert was instructed to deal with is to verify the authenticity of documents provided by the Appellant in support of his claim and what, if the documents were genuine, would be the risk to the Appellant, his wife, or children, if returned to Pakistan.
21. A newspaper article dated 3rd January 2012 is the first of the documents considered which was verified by a request through a named individual in Pakistan as having been a notice published in the named newspaper and stated to have been published at the request of the Appellant's brother, claiming the Appellant is missing or that his whereabouts are not know for the last six years and asking for information of him.
22. In relation to the documents originating from the High Court in Lahore, the experts states she asked an assistant in Pakistan to verify the writ petition and obtain the names of the parties, which he confirmed to be genuine, in addition to being told that the Appellant's wife's father and a local police officer were reprimanded by the High Court for interfering in the personal lives of the Petitioner and her husband (Appellants wife and this Appellant).
23. In relation to the FIR the procedure for such documents is set out in the report and it is said that the FIR provided corresponds to genuine FIR's but that the FIR is highly likely to be a copy of the original FIR filed into the concerned local police station in Pakistan. Ms Moeen states the document appears to be genuine to the civil standard.
24. A statement by a High Court lawyer, Mr A, dated January 2012 is noted and considered as are the content which is said to repeat the content of the FIR dated 3 January 2012 filed by him in the relevant police station. The author of the letter is a registered member of the Lahore High Court Bar Association. It is the expert's opinion that it is "equally possible that the contents of this document would have been true".

25. The documents the expert was asked to verify were filed by the Appellant in support of his claim to show the couple were harassed by their family and threatened by the police after they contracted a love marriage. His expert's view is that in Pakistan Society couples are often harassed and tracked down by their families in connivance with the police to restore the honour of the family because such couples are seen as rebellious and adulterous in Muslim society. The expert says that in Pakistan it is not considered acceptable to enter into a love marriage without family approval and she refers to various examples in the report of couples who have experienced difficulties as a result of contracting a love marriage.
26. The experts view is that the Appellant, his wife, and children have every reason to fear for their safety whilst they reside in Pakistan. The High Court documents referred to in cross-examination are stated to corroborate the claim of harassment being exercised by the Appellant's wife's family and that the Appellant's family's quest to locate his whereabouts is evidenced by the missing persons enquiry as was the targeting of the couple by the police while living as a married couple in Pakistan.
27. Ms Moeen asserts that due to country conditions it would be highly unlikely the family could settled secretly anywhere in Pakistan and that the family's could get information about their whereabouts in Pakistan by winning the favour of the police or by making checks on the national database which could be secured by a bribe. Ms Moeen's view is that if returned to Pakistan the risk posed by the missing persons report, relocation to other parts of Pakistan, poses a risk with the major cities seeing a brutal wave of targeted killings which is politically motivated, used to kill rivals and settle personal debts. The reasonableness of such an arrangement is, however a matter for the Tribunal and not a country expert.
28. Ms Moeen also opines that the authorities do not provide adequate protection to love marriage couples against risk of harm by their families and paints a jaded view of police corruption in Pakistan.

Discussion

29. The starting point in this appeal has been the preserved findings and the application of the Devaseelan principles. It is, however, settled law that previous determinations are not binding if the evidence provides good reason for departing from them. In this case it does not. In addition to the adverse credibility findings already made, this tribunal is also aware of inconsistencies in accounts given earlier and of the fact that the Appellant and his family made a false Visa application upon which they secured entry to the United Kingdom, which now appears to have been used as a vehicle to secure entry unlawfully after which they claimed asylum.

30. Whilst additional material has been made available that was not before earlier tribunal's that in itself does not warrant automatic departure from the previous findings, as such material has to be taken into account with all the available evidence.
31. The medical evidence has been considered and, as noted in cross-examination, provides no credible explanation for the Appellant's apparent inability to recollect details when responding to questions put to him, although it does indicate that he suffers from depression and PTSD. The submission that the existence of PTSD indicates he has suffered trauma which is at the very least consistent with the account given is not determinative of this issue as the medical expert fails to examine any other possible causes of his presentation or to set out the diagnostic basis upon which such a finding is made.
32. There are various additional articles and documents upon which the expert has been asked to comment three of which, the civil court suits, the High Court order dated 10th March 2003 and the newspaper articles were not considered by the judge who dismissed the wife's appeal. The documents were rejected in September 2011 in the Appellants own appeal due to suspicions as to their provenance.
33. It is not disputed that the parties married in Pakistan but his claim that his wife's family turned against him and prevented him having contact with them and his wife is undermined by his own evidence. The Appellant was asked questions about the period of separation and I find his answer not supported by the evidence when considered as a whole. In reply to a factual question regarding how long he and his wife lived apart, he claimed it was less than one month when the reality appears to be that it was in the region of nine months. The High Court documents indicate that despite the Appellant's best efforts to get his wife to return to him it was she who refused, having possibly left him as a result of domestic issues not connected with matters the Appellant relies upon as the basis of his claim.
34. The same court documents record that the Appellant and his wife visited her parent's 'ordinarily' on a number of occasions which undermines the Appellant's claim that he was never welcome at the property.
35. The evidence indicates that as a result of court proceedings it was accepted there was some degree of interference from the wife's parents after his wife left him but that after the Appellant and his wife became reconciled the court ordered that they should be able to continue to live together as husband and wife without external interference, as a result of the compromise agreement reached which included the Appellant paying 2000RS per month to his wife. When asked about this in cross-examination the lack of proper answer

strengthens the impression the Appellant was avoiding giving correct details, especially as some of the evidence he was asked about was in an affidavit/witness statement that he himself had signed as being true. The fact the High Court intervened and ruled in favour of the Appellant and his wife, chastising her parents and a police officer, also undermines the claim of Ms Moeen that the authorities will not intervene or provide assistance. In this case no such assertion can be accepted as the Appellant admitted he had not referred his alleged difficulties to the police in any event.

36. The newspaper article may be genuine as may other documents Ms Moeen has read and was asked to comment upon, but her report cannot be considered in isolation. An advocate is likely to file a document if instructed to do so by their client based upon instructions and information provided. A missing persons notice in a newspaper may have been placed there but whether it is because an individual is genuinely looking for the person named or for some other reason has to be considered. It is for these reasons that it is necessary to consider all the evidence in the round including the fact two previous experienced judges have found the account of the Appellant and his wife to lack credibility, albeit on different evidence.
37. It is accepted that marital relationships in Pakistan for those who enter love marriages do not, in all cases, run as smoothly as they would in relation to arranged marriages approved by family groups. This may be the case for some but the question is whether the Appellant, if returned, has substantiated he is at risk of ill treatment or persecution. I do not find a claim all love marriages place the parties to the same at risk to be substantiated on the evidence.
38. In relation to specific issues raised, it is also noted that there appears to have been periods where the Appellant and his family were able to live in Pakistan without experiencing difficulties, including prior to obtaining the visit visas to travel to the United Kingdom. I do not find the submission in Ms Moeen's report that there is no available internal flight option available to the Appellant that it is reasonable to expect him to avail himself of, has been substantiated. It is clear that they were able to live in Pakistan without being traced at a time he claims the risk was imminent and was able to engage in public proceedings before the High Court and continue with his business. This last finding is made based upon the evidence given to the court hearing the appeal against the visit visa refusal who examined the nature of the financial and other documentary evidence made available which supported a finding that the Appellant continued with his very successful business ventures earning a considerable income by local standards, which enabled him to accumulate savings and land assets. There is no evidence of the disposal of such commercial interests in Pakistan and the Appellant's evidence with regard to this element was, again, vague.

39. Ms Moeen indicates that family members may be able to locate the Appellant if they really wanted to on return to Pakistan but if they do not know where he is and there is no reason to believe the family will know he has returned or to which part of the country he chooses to relocate himself if he does not wish to return to his home area, risk throughout all Pakistan is not substantiated. The Appellants evidence is that he settled in other cities without difficulty in the past in Pakistan which is a vast and populated country. He has not substantiated a claim it is not reasonable in all the circumstances for him to make use of such an option.
40. Even if even if a FIR has been lodged this is not a conviction but a first report. If arrested bail may be available and the basis of the charge is disputed as being false. In **SA (Fair Trial-Prison Conditions) Pakistan CG (2002) UKIAT 05631** the appellant claimed to have had political problems and said, amongst other things, that false charges had been brought against him in relation to fraud and possible embezzlement affecting the Railway Lahore Co., charges having been made by the Deputy Director of that company. There were two arrest warrants against him. The Tribunal took the view that, despite a certain amount of government interference the higher level of judiciary in Pakistan was considered to be 'competent and generally honest' although there were reports of corruption at a lower level of magistrates courts and minor court officials. The judiciary had demonstrated its capacity to act independently, for example by ordering amendments to the National Accountability Bureau of Ordinance and by ordering the acquittal of ten political activists charged with murder and arson, including the murder of a policeman. The Appellant appeared to have the necessary resources in order to ensure that he would be properly represented by a competent lawyer if the charge against him was pursued. The Tribunal concluded that he would receive a fair trial and since the charges were false, he had every opportunity to make a plea to that effect to the judiciary.
41. It has not been shown the Appellant will not receive a fair trial if proceedings are commenced, and nor has it been shown the Appellant will suffer any form of ill-treatment during the interim period sufficient to entitle him to a grant of international protection.
42. In relation to medical matters, there is no valid claim based upon a breach of Articles 3 and 8 in relation to the same with any prospect of success. The Appellant has not substantiated his claim to show that adequate medical services are not available in Pakistan if required or that such services would not be available to him from the point of removal, in transit, or when back in his home state that would not meet his immediate and future needs.

43. No convention reason is engaged and it has not been shown that the Appellant is able to succeed with his refugee claim. In relation to the claim under Article 3 ECHR, the burden is upon the Appellant to corroborate his claim and in light of the evidence considered as a whole, including the adverse credibility findings, the current oral evidence and up-to-date documentary material, it has not been established that the Appellant has substantiated his claim to show that the core account he relies upon is credible/true. As the core account fails the claim there will be breach of Article 3 on return is dismissed as are all related protection elements.
44. Article 8 ECHR and other elements of the case have to be considered in relation to the situation appertaining at the date of the hearing. In relation to Article 8 matters the Appellant accepted he cannot meet the requirements of the Immigration Rules and in relation to the proportionality of the decision he relies heavily on the psychiatric care he received in the United Kingdom but, as stated, this is not been shown to warrant a granted of leave on any basis.
45. The Appellant also claims he has a subsisting relationship with his children, the eldest of which has been in the United Kingdom for seven years. Although some of the older case law relating to the nature of integration refers to the passage of time, it is important to note that seven years in isolation is not the United Kingdom government's view of such issues which requires a period of seven years and a finding it is unreasonable for the children to be returned to their home state.
46. There is no evidence that the children, who are said to live with their mother following the separation of their parents, have leave to remain in the United Kingdom and so will no doubt be the subject of a direction for their removal with their mother to Pakistan.
47. The case law relied upon by the Appellant in relation to Article 8 was decided prior to not only the introduction of the new Immigration Rules but also prior to the incorporation of the Article 8 criteria into statute in the Immigration Act 2014, which has the effect of rendering a lot of the earlier jurisprudence outdated.
48. The Appellant's wife did not attend the Upper Tribunal to support her husband. She provided no reliable documents in relation to her case and issues such as her address in Pakistan and findings relating to the lack of credibility in that account are relevant.
49. The Appellant has contact with the children, according to his oral evidence, but this is not corroborated or supported by any statement from their mother or the school and the witness who prepared the written statement failed to attend and to be cross-examined. In light of the discrepancies in the Appellant's evidence little weight can be placed upon this additional witness statement.

50. It was accepted before the Upper Tribunal that the best interests of the children will be to remain with their mother although as they have no status the Secretary of State's position is that it is reasonable for them to return to Pakistan where their lives can continue.
51. In relation to the provisions of the 2014 Act there is no evidence of parental relationship between the Appellant and his children and no exceptional circumstances proved in this case. I accept there are a number of factors that may assist the Appellant if he is able to prove the same, such as language issues if he is able to speak English and available financial resources, but the children are not qualifying children even if he does maintain the contact he claims to have with them.
52. His private life has been formed at a time he has no leave to remain and so the weight to be given to this element is reduced.
53. Having considered all the available material, and when addressing the fifth of the Razgar questions, I find the Secretary of State has discharged the burden of proof upon her to the required standard to show the decision is proportionate. Any period of separation if the Appellant is moved ahead of his wife and children has not been shown to be unreasonable on the evidence provided or consequences such that the decision is not proportionate to the legitimate public interest considerations relied upon.

Decision

54. **The First-tier Tribunal Judge materially erred in law. That decision was set aside. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

55. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 18th November 2014