



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

Appeal Numbers: IA/18295/2013  
IA/19425/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19 June 2014**

**Determination**

**Promulgated**

**On 26 June 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCWILLIAM**

**Between**

**MR MUHAMMAD SUFIAN SHEIKH  
MRS RUKHSANA SHEIKH**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr S Canter, Counsel

For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. The first appellant, Mr Muhammad Sufian Sheikh, is a citizen of Pakistan and his date of birth is 14 June 1984. His mother, Rukhsana Sheikh, is the second appellant. Her date of birth is 16 October 1944 and she also is a citizen of Pakistan.
2. Both appellants were granted visit visas on 21 November 2011 which expired on 21 November 2013. The appellants entered the UK on 17 October 2012. On 28 March 2013 both appellants made an application to vary their leave to remain in the UK under Article 8 of the 1950 Convention on Human Rights. The applications were refused in a decision of the respondent of 14 May 2013. The Secretary of State considered the appellants' private lives and decided that they did not satisfy the requirements of paragraph 276ADE of the Immigration Rules. They were

advised by the Secretary of State that if they are in fear of persecution they should make an application for asylum.

3. The appellants appealed against the decision of the Secretary of State on the grounds of their private and family life and under Article 3 of the 1950 Convention on Human Rights. The appeal was dismissed by Judge of the First-tier Tribunal Taylor in a decision dated 1 April 2014 following a hearing on 24 March 2014. Permission to appeal was granted by Judge of the First-tier Tribunal Fisher on 12 May 2014. Thus the matter came before me.

### **The Evidence Before the First -tier Tribunal and the Findings**

4. At the hearing before the First-tier Tribunal the appellants both gave oral evidence. In addition the first appellant's siblings (the second appellant's adult children) gave oral evidence. There were witness statements from those who gave oral evidence and other members of the family.
5. The evidence of the appellants was that there had been a problem in Pakistan prior to coming to the UK relating to a plot of land which had been transferred into the name of the second appellant following the death of her husband in 2008. They had been threatened on the telephone. People had attended their house in Pakistan and pointed a gun at the first appellant. He was assaulted and shots were fired through a window of the house. The police were called. There was a second incident where a kidnap attempt was made on the first appellant. It was shortly after this incident that the appellants travelled to the UK. The appellants suspect that the assailants are someone within the family who are aware of the land and who are trying to force them to sell the land to them. The incident was reported to the police and the appellants submitted a police report which had been translated into English for the appeal. Since they came to the UK they have been told by their neighbours in Pakistan that their house (the appellants' home) has been broken into. They changed their minds about returning to Pakistan. The appellants do not believe that the police are able to help them. They could not live anywhere else in Pakistan because the assailants would be able to locate them.
6. The First-tier Tribunal heard evidence from the first appellant's sister (the second appellant's daughter) Aroosa Sheikh. Her evidence was that her mother was very upset after the death of her husband. There had been threats by people in Pakistan concerning family land and it is not safe for the appellants to return to Pakistan. Aroosa Sheikh lives with her husband in the UK. Her husband is a British citizen and she is here on a spouse visa but intends to apply for a settlement visa. The appellants do not have any contact with other family members in Pakistan.
7. The First-tier Tribunal heard evidence from the first appellant's brother (second appellant's son), Usman Sheikh. He has discretionary leave to

remain in the UK and his evidence is that he is eligible for indefinite leave to remain in 2016. Like his sister he is a citizen of Pakistan. His evidence was that his mother is emotionally dependent on his family and is very close to his three children (her grandchildren). Mr Sheikh is separated from the mother of his eldest child and he has made applications for access and this is why he has been granted discretionary leave.

8. The First-tier Tribunal made findings at [16], [17], [18] and [20] of the determination:

“16. With regard to the claim under article 3 ECHR, I have been duly reminded of the lower standard of proof in such cases but offered no explanation as to why neither of the appellants had chosen to make a proper application for asylum or humanitarian protection, despite the second appellant being advised in the refusal letter that she should lodge a claim with the Asylum Screening Unit if she wished to progress the claim. I refer to S8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004, which lists modes of behaviour by a person claiming asylum or human rights, which damages their credibility. This includes behaviour which is designed or likely to conceal information, or mislead, or obstruct or delay the handling or resolution of the claim. S8 of the Act also includes failure to take advantage of a reasonable opportunity to claim asylum or humanitarian protection on reaching a safe country. I find that the appellants’ complete failure to claim asylum or humanitarian protection in the UK seriously adversely affects the credibility of their claim that they would be at risk on return to Pakistan. The appellants entered the UK on a visit visa on 17<sup>th</sup> October 2012, they did not claim protection on entry to the UK and did not make any application for a further five months until 28<sup>th</sup> March 2013 when their visas had almost expired. I find that their failure to claim protection on arrival in the UK and their further delay in making any application is an additional adverse indicator of the credibility of their claim. Even in making their applications, the main thrust of the applications was to remain in the UK on the basis of family and private life and the threats in Pakistan were secondary to the extent that there was no claim for asylum or protection. In giving oral evidence, both the appellants and their supporting witnesses stated that the appellants came to the UK for the purpose of a three to four week visit and had return tickets. When they came to the UK they intended to return but they only changed their minds after speaking to neighbours who told them that their house had been broken into. The submitted evidence is therefore clear that at the time that the appellant’s left Pakistan they did not consider themselves to be at such a risk that they would not be returning. It is sadly common all across the world that people who go on holiday find that their houses have been broken into while they have been away. The

appellants have failed to offer any explanation as to why they considered that their house being broken into would put them in a position of requiring international protection, they clearly did not think this necessary when they left Pakistan.

17. The appellants claimed that they could not return as they could not rely on the protection of the police. The appellants have submitted a copy of the report with the first appellant made to the police, he clearly felt able to attend the police station to make the report and explain the circumstances. The appellants gave no evidence that they would be unable to approach the police or expect them to assist. I find it significant that the alleged shooting at the appellants' house was not noted in the report, which suggests that it was either not mentioned or not given any prominence as part of the account. The appellant's have submitted no independent evidence that the Pakistan police force may not be able to cope with such an investigation or would be unwilling to do so. The supporting statement of a neighbour says that no investigation had been carried out into the break in but that is based on his observations only, as he was not the complainant. They have complained that the police had not prevented any further attacks but they had not provided the police with any names of the attackers or any possible identities of the attackers. They think that the attackers may have connections with the family but have been unable to state which members of the family may be involved. The appellants have provided the police with no information on which they may identify their assailants, and I consider that they have provided no evidence of lack of co-operation by the police. The police report notes that the first telephone call from the assailants was on 4<sup>th</sup> October 2012, less than two weeks prior to the appellants leaving for the UK, the second incident took place three days before they left for the UK. The only evidence that the appellants have provided that they reported these matters to the police is dated 14<sup>th</sup> October 2012, three days before they left for the UK, they have submitted no evidence of a prior notification to the police. I find that without having provided the police with any identification of the attackers, the appellants left the country within three days, leaving the police with no reasonable opportunity to investigate the matter before they left. It is therefore not surprising that they intended to return to Pakistan when they first arrived in the UK. I find that the appellants have not claimed that they were under threat from agents of the state and they have failed to provide any evidence of the lack of availability of police protection. I have found that when they arrived in the UK that they had every intention of returning and they had no fear of return. The appellants have given no evidence of the identity of their assailants and I find that their assertion that they would be at risk in any part of the country is

entirely speculative. Even on the lower standard of proof I am not satisfied that the appellants would be at risk on return to Pakistan on account of a land dispute or for any other reason.

18. In considering the article 8 appeal, my starting point is the five stage test as set out in the case of Razgar 2004 UKHL 27. I find that the refusal was in accordance with the law, as the appellants currently have no basis to remain in the UK in accordance with the Immigration Rules, they did not claim to remain under the Immigration Rules and I have found that they would not satisfy the Rules with regard to family life under Appendix FM. I find that the removal of the appellants would be for the legitimate purpose of maintaining effective immigration control. With regard to the first appellant I refer to the case of Advic v UK 1995 ECHR 57, which established that the relationship between adult family members would not usually form the basis of an article 8 claim. The first appellant is an independent adult, he worked in the IT sector in Pakistan and had qualifications from the UK. His purpose to come to the UK was merely to visit his siblings and I have not accepted his claim that he had other reasons why he could not return. While I may accept that the first appellant would be comfortable living with a sibling in the UK and the arrangement may be convenient, I find no additional factors which would engage the first appellant's relationship with his siblings to article 8 ECHR. I find that the first appellant does not meet the requirements of the first of the Razgar tests and I find that he has not established a family life in the UK for the purposes of article 8 ECHR. There would be no interference with family life which would engage article 8 and I find that his removal would be proportionate to the need for immigration control. The first appellant has more distant relatives both in the UK and in Pakistan. With regard to private life, the first appellant has given evidence of some communal involvement and having friends in the UK. I refer to the guidance in the case of MG Serbia and Montenegro 2005 UKAIT 113, which is authority for the established case law that merely having a job and friends would be insufficient to create a private life for the purpose of article 8, as they could be recreated elsewhere. The first appellant does not work in the UK and does not have substantive leave, he had employment in Pakistan and he gave no evidence that he could not restart his private life in Pakistan. I find that the first appellant has not established a private life in the UK for the purposes of article 8 ECHR. Similarly, the second appellant gave evidence of communal involvement and friends in the UK. She had property and land in Pakistan and gave evidence of being a teacher all of her life and running her own school. I have not accepted that the second appellant would be at risk on return to Pakistan and she has given no evidence as why the private life that she had before she came to the UK could not resume on her

return. She stated that she was involved in the community in Pakistan. Her own evidence was that she only intended visiting the UK for a period of three to four weeks. I find that the second appellant has failed to demonstrate that she has established a private life in the UK, in the last 18 months, to the extent which would engage article 8 ECHR.

20. With regard to the family life of the second appellant, I have found that she has not met the requirements of the Immigration Rules as a dependant relative. I have not accepted the first appellant's claims to remain in the UK on any grounds. The current position is therefore that she has two children living in the UK and one would be living with her in Pakistan on return. This was the position before the second appellant travelled to the UK for a visit in 2012. The two children living in the UK are neither UK citizens and neither do they have indefinite leave to remain. One considers that he is eligible to apply for ILR in 2016 and the other is yet to apply for settlement. They both currently have limited leave only. I fully accept that the second appellant may find life more convenient to be nearer to her two children with limited leave, which amounts to a limited family life, but she gave evidence of living in Pakistan for a number of years and visiting the UK on a yearly basis. The second appellant is a teacher of many years experience and she is aged 69, she gave her evidence clearly and cogently. She was able to live with her youngest son only, with occasional visits to the UK for a number of years. The second appellant's children in the UK have sought to persuade the Tribunal that the second appellant is dependant on them as she is a widow and has hypertension. The second appellant has submitted no evidence of evidence of clinical depression or being unable to cope, and she was able to manage from 2008 until 2012, when she came to the UK. Hypertension is a condition which effects a large proportion of the population and is managed by tablets. The second appellant gave no evidence that she would be unable to take her tablets without her children in the UK or that she was otherwise effected by the condition. The second appellant had not lived in a family unit with her children in the UK prior to 2012 and she gave no evidence as to why she could not continue to visit her family in the UK and keep in contact with modern means of communication. The family in the UK could keep contact as previously and there would be no breach of their rights to family life and remain in contact with the second appellant. I find that the interference with the limited family life which the second appellant has in the UK with two of her children would not be of such magnitude to engage article 8 if she was to be removed from the UK. I find that her removal would be proportionate to the need for proper and effective immigration control."

## **The Grounds Seeking Permission to Appeal and Oral Submissions**

9. The grounds seeking permission to appeal argue that the Judge erred in relation to Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (“the 2004 Act”) and the decision was contrary to the guidance in **JT (Cameroon) v SSHD [2008] EWCA Civ 878** because the word “potentially” should be read into Section 8. Section 8 was not cited in the Reasons for Refusal Letter and it was not an issue that was raised by the Presenting Officer at the hearing before the First-tier Tribunal. The Judge did not raise the issue at the hearing and did not give the appellants the opportunity to address the issue, which results in a breach of the principles of natural justice and resulted in unfairness.
10. The grounds argue that the Judge erred in failing to consider the best interests of the children. The Judge erred in finding that the first appellant did not enjoy family life in the UK. The Judge failed to give any adequate justification for the inconsistency having found that the second appellant has family life which would engage the Convention, but not the first appellant. The Judge failed to apply anxious scrutiny to the appellants’ claim to be at risk on return to Pakistan. The Judge did not make a finding as to the credibility or otherwise of the appellants’ accounts.
11. Both Mr Canter and Ms Holmes made oral submissions. Mr Canter’s oral submissions were in the context of the grounds seeking permission to appeal and Ms Holmes’ were in the context of the response under Rule 24 of the 2008 Procedure Rules.

## **Conclusions**

12. Contrary to the assertion made in the grounds, the First-tier Tribunal found that the appellants were not credible witnesses. Their account was not accepted by the Judge. At [17] the Judge refers to the 2004 Act. He went on to find the appellants’ complete failure to claim asylum or humanitarian protection in the UK as seriously adversely affecting their credibility. He found that delay in making the application was an additional adverse indicator of the credibility of their claim. In my view the delay in the appellants making a claim was always an obvious issue whether in the context of Section 8 of the 2004 Act or not. Those representing the appellants must have been of this view because the issue is touched upon by the appellants in their evidence. In the first appellant’s witness statement he refers to this at [17] when he stated that he has now been informed by neighbours that the house in Pakistan has been broken into and they had seen suspicious people around the house. The second appellant referred to this at [7] of her witness statement. Her evidence is that she did not want to make a formal claim for asylum as she did not intend to stay here longer than the time period of her visa. She wanted to return to Pakistan, however, the situation has deteriorated. The appellants were represented by experienced Counsel, and the Judge in my view was entitled to attach weight to the fact that there had been a delay in making

a claim. I disagree that this was the Judge's starting point for credibility and not in accordance with the judgement in **JT (Cameroon)**. I do not regard the positioning of Section 8 within the determination to be an error in this case. It is clear from the Judge's findings that delay was not a determinative factor in the credibility assessment.

13. The Judge in my view made a global assessment of credibility. There were a number of reasons why the appellants' credibility was not accepted including the following:
- (1) The delay in making the application.
  - (2) The appellants' evidence that they felt that they could not rely on the police was not consistent with their evidence that they had attended the police station in order to report the incident.
  - (3) The alleged shooting at the appellants' house was not mentioned in the incident report submitted by the appellants in evidence.
  - (4) There was no independent evidence that the Pakistani Police Force may not be able to cope with such an investigation or would be unwilling to do so.
  - (5) The appellants complained that the police had not been able to prevent further attacks but they have not been able to provide the police with any names of the attackers or their possible identities.
  - (6) The appellants think that the attackers may have connections with family but have been unable to state which members of the family may be involved.
  - (7) The appellants did not provide the police with any information that could lead to the identity of the assailants. They provided no evidence of lack of cooperation by the police.
  - (8) The police report notes that the first telephone call made by the assailants to the appellants was on 4 October 2012 but the only evidence that they provided that the appellants had reported the matter to the police is dated 14 October 2012, which is three days before the appellants left Pakistan. There was no evidence of prior notification to the police.
  - (9) The appellants left the country within giving the police a reasonable opportunity to investigate.
  - (10) The appellants' claim to be at risk is speculative.



14. In oral submissions Mr Canter submitted that the Judge erred in concluding that the appellants had failed to provide evidence of the lack of availability of police protection (see [17]) and that they gave no evidence that they would be unable to approach the police or expect them to assist (see [17]), because the appellants had given oral evidence about this. In my view the Judge understood the appellants' evidence in relation to sufficiency of protection, but did not accept it noting that they attended the police station to report the incident and that there was no independent evidence that the police in Pakistan would not be able to cope with such an investigation or that they would be unwilling to (see [17]). It was open to the Judge to conclude that there was sufficiency of protection.
15. The Judge made an error because he did not make a finding in relation to the best interests of the children of Usman Sheikh, namely Esa (date of birth 24 August 2008), Inaam (date of birth 13 May 2012) and Ahad (date of birth 19 January 2014). The two youngest children live with their parents and they have lived with the appellants since their arrival in the UK or, in the case of the youngest child, since birth. The eldest child lives with his mother.
16. It is likely that the children enjoy the company of their uncle and grandmother. However, in my view there was no suggestion that the decision to remove the appellants would be contrary to their best interests in the context of Section 55 of the Borders, Citizenship and Immigration Act 2009. It is the best interests of the children to be with both their parents and there is no suggestion that the decision would interfere with this. The status of the children in the UK was not entirely clear but their father has discretionary leave and he is not a British citizen. The error is not material because it did not infect the subsequent balancing exercise under Article 8.
17. The Judge was entitled in my view to find that the first appellant did not enjoy family life in the context of Article 8. He is an adult and his family life is with his adult siblings and mother and niece and nephew. The Judge seems to find that the second appellant does have family life in the UK but this in my view is not at odds with the decision in relation to the first appellant. The Judge took into account the second appellant's involvement with her grandchildren and dependency on her adult children.  
In any event, the overall finding that the decision is proportionate is not flawed.
18. The appellants could not satisfy the requirements of the Immigration Rules. They would be returning together to Pakistan where the Judge found they would not be at risk on return. The members of the family who are in the UK are not British citizens and there has been a history of visits which presumably could continue.
19. In my view there is no merit in the argument that the Judge did not apply anxious scrutiny to the evidence. He properly identified the standard of

proof in relation to Article 3. It is obvious that he found both appellants to be lacking in credibility and he rejected their evidence. His findings in my view are adequately reasoned.

20. The decision of the First-tier Tribunal to dismiss the appeal under Articles 3 and 8 of the 1950 Convention on Human Rights stands.

Signed Joanna McWilliam

Date 25 June 2014

Deputy Upper Tribunal Judge McWilliam