



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/11958/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Microsoft Teams
On Thursday 17 June 2021

Decision & Reasons Promulgated
On Wednesday 30 June 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR WALEED AHMAD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jaffar, Counsel instructed by Lee Valley solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. By a decision dated 23 September 2020 and sent to the parties on 28 September 2020, I found an error of law in the decision of the First-tier Tribunal Judge Row itself promulgated on 4 November 2019 which had dismissed the Appellant's appeal. I therefore set aside Judge Row's decision and gave directions for a resumed hearing of the appeal in this Tribunal. My error of law decision is appended hereto for ease of reference.

2. My error of law decision was made on the papers pursuant to Rule 34 Tribunal Procedure (Upper Tribunal) Rules 2008. I was conscious that Mr Justice Fordham in Joint Council for the Welfare of Immigrants v The President of the Upper Tribunal (Immigration and Asylum Chamber) [2020] EWHC 3103 (Admin) held that the President's Practice Direction in relation to the making of error of law decisions on the papers without a hearing was unlawful on the ground that it gave rise to "an overall paper norm" which was procedurally unfair. That judgment was handed down after my error of law decision. I therefore checked with both parties at the outset of the hearing before me whether either sought to challenge the error of law decision on that basis or to seek a review of it. Both confirmed that they did not. The setting aside of Judge Row's decision was to the benefit of the Appellant since he had sought to challenge it. The Respondent had the opportunity to put her case to me directly for a second time and was not prejudiced by any lack of opportunity to argue the error of law issue at an oral hearing.
3. The facts of this case so far as they were relevant to the error of law issue are set out at [2] of my decision and I do not need to repeat what is there said. In short summary, the Appellant argued that it was highly relevant that Judge Row had found not to be made out the Respondent's allegation concerning the use of false bank statements in an earlier application in 2015. I will though have to deal with other facts of the Appellant's case as a result of his change of position on this issue as I will come to.
4. By my decision I directed that the Respondent should file whatever evidence she had regarding the false bank statements as that issue appeared to me to be central to the success or otherwise of the Appellant's case. I directed that the Appellant should file evidence in response (and any other evidence on which he relied) and written submissions following the service of the Respondent's evidence. I also indicated that he should say who were to be his witnesses at the hearing.
5. Under cover of an email dated 20 October 2020, Mr Tan on behalf of the Respondent filed her further evidence in relation to the bank statements. I will come to the substance of that evidence in due course so far as it is now necessary for me to do so. I note that the e-mail was clearly addressed to an e-mail address info@leevalleysolicitors.co.uk which was that of the Appellant's solicitors as shown on their headed paper when the appeal to this Tribunal was submitted. I note that it was also sent to faratasghar@gmail.com which appears to be an email address belonging to the Appellant's wife.
6. On 27 November 2020, following a chasing e-mail from the Tribunal on the previous day, the Appellant's solicitors indicated that they had not received anything from the Respondent. They said that, in relation to the bank statements, they continued to rely on the findings of Judge Row (that the allegation that these were false was not made out). They asked that they be given a further opportunity to respond if the Respondent was given further time to serve evidence. They also indicated that both the Appellant and his wife would be giving evidence at the hearing but that no interpreter was required. I note in passing that the solicitor's

email came from an e-mail address claims@leevalleysolicitors.co.uk. It is not clear when this e-mail came into being but in any event their website address even now shows the “info” e-mail address as being still current.

7. Be that as it may, UTJ O’Callaghan reviewed the file on 1 February 2021. Having set out events to that date as explained at [5] and [6] above, he concluded as follows:

“... 6. The Tribunal is satisfied that the respondent complied with direction 1 and served relevant documents upon the appellant’s legal representatives via their professional email address on 20 October 2020. The Tribunal observes that it is appropriate practice for legal representatives to regularly check their professional email accounts to identify as to whether email correspondence has inadvertently been placed in a ‘junk’ or other folder.”

He went on to direct that the Appellant should file within the following 14 days any further evidence and submissions on which reliance was to be placed and, if the Appellant did not have Mr Tan’s e-mail dated 20 October 2020, they should take steps to obtain it.

8. In response, on 13 February 2021, the Appellant’s solicitors filed further submissions (“the Further Submissions”) and documents. The Further Submissions were said to be drafted by Counsel, Mr Anwar M Babul, who was not counsel appearing before me. His name does not appear at the foot of the Further Submissions. I will come to the substance of those in due course. I will also deal later in this decision with the further documents. The e-mail from Mr Tan was acknowledged to have been received by the solicitors but it was said to have been “overlooked”.
9. I canvassed with Mr Jaffar at the outset of the hearing which of the witnesses would be giving evidence. He indicated that neither would give evidence on his understanding. The Appellant was present remotely, but Mr Tan indicated that he did not consider it necessary to cross-examine him. The Appellant’s wife did not attend.
10. In relation to documents, I had those sent with the e-mails to which I have already referred and a core bundle of documents relevant to the appeal including the Respondent’s bundle. I also had a small, unpaginated bundle of documents which I had taken to be the Appellant’s bundle before the First-tier Tribunal. However, upon investigation, it became clear that it was not. Mr Jaffar indicated that he had a volume of documents in a bundle received electronically which included what was before Judge Row. The bundle of documents before Judge Row ran to 24 pages and included witness statements which I had not previously seen. Mr Tan however had that smaller bundle and arranged for it to be provided to me electronically. I refer to documents in that bundle hereafter as [AB/xx].
11. The hearing before me took place via Microsoft Teams. As I have already indicated, it was attended by representatives for both parties and the Appellant himself. After some initial teething problems on joining, the hearing proceeded without major technical problems. As I have indicated, I was not asked to hear evidence from the

Appellant or his wife and the hearing proceeded by way of submissions only with reference to the limited documentation produced.

EVIDENCE, FINDINGS AND ASSESSMENT

The Bank Statements and Suitability

12. As I set out at [13] of my error of law decision, the Respondent's decision under appeal refused the Appellant's application on suitability grounds on the basis that he had produced bank statements which were "fraudulent". As I there pointed out, the Respondent did not provide any supporting documentation for that allegation with the decision letter.
13. Judge Row had before him a "Domestic Reference Form" indicating suspicions about the bank statements. He said however that he had no evidence about any final conclusions regarding the bank statements. He therefore concluded that the allegation that they were fraudulent was not made out. It is that conclusion on which the Appellant has relied and indeed continued to rely in the Further Submissions. The Appellant's position as there stated is as follows:

"9. It cannot be disputed that had the bank statement been correctly accepted as genuine, as has been found it is, then the appellant would have been granted leave to remain for 30 months as a spouse and not become an overstayer as they did precisely because of the this [sic] decision which has now been found to have been wrong."

[my emphasis]

The Appellant went on in the Further Submissions to point to case law regarding the need to put him back in the position he should have been in "where the respondent's view turns out to be factually mistaken."

14. I no longer need to determine the issue whether the bank statements were genuine (in the sense of genuinely showing what they purport to show) as Mr Jaffar indicated at the outset of the hearing that the Appellant's position now is that he accepts that they were not. I expressed some surprise that, in those circumstances, the Appellant's solicitors had filed the Further Submissions maintaining the Appellant's position that they were genuine. I do not criticise Mr Jaffar in this regard. He was not the person who drafted the Further Submissions. Nor do I criticise the barrister said to have drafted them as his name did not appear on that document and, in any event, it is for the solicitors to provide instructions to the barrister in relation to the stance to be taken.
15. Mr Jaffar made the point that it was for the Respondent to prove that the statements are false, and the position taken was that insufficient evidence had been provided. The Further Submissions however go further. In the sentence I have emphasised above, the Appellant asserted a positive case that the statements were "correctly accepted as genuine". The same positive case appears from the grounds of appeal against Judge Row's decision. For example, it is said at [6] of the grounds that "had the bank statement been accepted as genuine (rather than wrongly declared as

fraudulent)” (my emphasis) the Appellant would have been entitled to a grant of further leave. The advancing of that positive case is potentially misleading and therefore contrary to the solicitor’s duty to this Tribunal.

16. Insofar as Mr Jaffar submitted that he did not know when the solicitors became aware of the Appellant’s acceptance of the position, that is no answer since they should not have advanced his position without taking proper instructions to ensure that it was true. I note that the witness statements of the Appellant and his wife prepared for the First-tier Tribunal are entirely silent on this issue and it is unclear whether the solicitors took the instructions they should have taken in order to challenge the Respondent’s assertions. For those reasons, and because of the solicitor’s handling of this case as set out at [6] to [8] above, I have made a “Hamid” direction at the end of this decision requiring the solicitors to explain their conduct.
17. Although, as I say, I do not need to determine the issue of the genuineness of the bank statements, I add for completeness that, on the basis of the documents produced with Mr Tan’s e-mail of 20 October 2020, I would have accepted that they were fraudulent. It appears that Judge Row may have been given only the Domestic Referral Form which does indeed only refer to the Respondent’s concerns about the original documents provided in terms of their form. I have however been provided with a Barclays Verification Proforma dated 5 May 2016 which, with the e-mails also annexed to Mr Tan’s e-mail, confirms that, although the bank account name, address, sort code and account number were verified, the transactions were not. Barclays confirmed that “the transactions listed in the documents provided do not match those on bank records, so yes they are false”. The Respondent was therefore entitled to reach the conclusion she did that the documents were fraudulent. She was thereafter entitled to refuse the Appellant’s current application on suitability grounds for that reason. Mr Jaffar accepted that this was the position. I turn then to the impact of that.

Obstacles to Family Life Continuing in Pakistan

18. As Judge Row concluded, the Appellant has been an overstayer since 13 August 2016 when his application of 23 September 2015 which included the false bank statements was refused. Since the bank statements are now accepted to have been fraudulent, the Appellant has no explanation to put forward in mitigation of that position. He has overstayed now for nearly five years.
19. As an overstayer, the Appellant could not meet the requirements of Appendix FM to the Immigration Rules (“the Rules”) unless paragraph EX.1 of Appendix FM (“Paragraph EX.1”) is met. Paragraph EX.1 is met only if the Appellant can show that there are insurmountable obstacles to family life continuing in his home country. Paragraph EX.1 cannot apply in this case however because the Appellant fails on suitability grounds (see R-LTRP.1.1(d) of Appendix FM). As Mr Jaffar accepted therefore, the Appellant’s claim cannot succeed under the Rules. It can be considered only outside the Rules.

20. Mr Jaffar submitted however that an analogous consideration should apply outside the Rules because, if there are insurmountable obstacles to the Appellant's family life continuing in Pakistan, removal of the Appellant would bring that family life to an end rather than permitting it to continue abroad or would lead to a temporary separation if the Appellant could re-apply from Pakistan for entry clearance.
21. I do not need to deal with the latter of those two scenarios since Mr Jaffar accepted that, because of the suitability refusal, it was quite unlikely that the Appellant could successfully apply for entry clearance to re-join his wife. In other words, either family life could continue in Pakistan or would be permanently severed. Those options are of course highly relevant to the level of interference with family life.
22. There were two general reasons why it was said that the Appellant and his wife could not return to Pakistan. Those were the medical conditions of the Appellant and his wife and the risk they would face there because of the opposition of the Appellant's in-laws to the marriage.

Medical Conditions

23. It is asserted that the Appellant and his wife could not return to Pakistan due to their medical conditions. I begin with the evidence which was before Judge Row. I have set aside his decision and it is not therefore appropriate for me to rely upon his findings. However, since I did not hear oral evidence, it is appropriate to take into account the evidence he received.
24. The only medical condition relied upon before Judge Row was that the Appellant's wife was receiving fertility treatment in the UK. The only evidence in this regard is the Appellant's wife's assertion to that effect in her statement of 23 September 2019 at [AB/7]. She there also asserts that she would not be able to complete her treatment in Pakistan.
25. As I pointed out to Mr Jaffar, the letter from the NHS Birmingham Women's and Children's NHS Foundation Trust dated 8 November 2017 at [AB/12] tends to undermine the Appellant's wife's assertion. This letter indicates that, as the Appellant's wife was at that time aged 47 years (now over 50 years), she could not be offered treatment. It is said that there might be an alternative course for which there is a waiting time of two years but there is no evidence that the Appellant and his wife were subsequently offered that treatment or that they found treatment elsewhere. In any event, there is no evidence that such treatment is not available in Pakistan.
26. The further evidence provided with the e-mail from the Appellant's solicitors contains eleven pages of medical notes relating to the Appellant. There is no statement from the Appellant explaining his medical conditions or the treatment he is currently receiving. There is no letter from a GP explaining the notes. Even taking those notes at face value, they show problems concerned with diabetes, Vitamin D deficiency and viral hepatitis B. Those are all said to be active although some date back to 2014 and it is not clear which are still causing problems. The Appellant is said to have presented with "Anxiety with depression" in April 2019 but there is no

explanation of the level of depression nor any indication of ongoing treatment for any mental health condition such as counselling. It does appear that the Appellant is prescribed anti-depressants (Fluoxetine) but it is not clear from the notes from when he was prescribed those. There is a prescription dating to February 2021. The Appellant is also prescribed medication for diabetes and, it appears, cholesterol. Importantly, though, and as Mr Jaffar accepted, even taking what those notes show at their highest, there is no evidence that such medication is not available in Pakistan.

Risk on Return to Pakistan

27. The evidence in relation to this part of the Appellant's claim appears in the witness statements of the Appellant and his wife and in the evidence given to Judge Row. Although Mr Tan sought to rely on Judge Row's findings in this regard, that is inappropriate in circumstances where I have set the decision aside, although I accept that the Appellant did not challenge Judge Row's findings in this regard. However, since I did not hear oral evidence, it is appropriate for me to have regard to the evidence given to Judge Row.
28. The Appellant's witness statement dated 23 September 2019 ([AB/8-10]) in this regard reads as follows:
- “5. I would like to mention that after my marriage, I had no intention to move to the UK. I and my wife had various discussions about moving to the UK however I was living a comfortable life in Pakistan and did not want to change it.
6. After our marriage, we received phone calls in which I was asked to leave my wife or face severe consequences. I and my wife were threatened at various occasions. We restricted our movement and would not go out unless it was unavoidable.
7. I would like to mention that after receiving threatening [sic] phone calls, my wife and family started to insist that I and my wife should move to the UK. I became very concerned about safety of my wife and asked her to move to UK as at most occasion females are killed by their own family members if they marry against the wishes of their family. I later joined her in April 2015 after grant of visa.
8. I would like to mention that my family life is established for considerable period of time. I would like to mention that it will not be possible for me and my wife to continue our family life in Pakistan as we will face a constant risk of severe harm from my wife's family.
9. I would like to mention that I feel much happier and safer in United Kingdom. On the contrary in case of our return to Pakistan I and my wife will not be able to continue a stable life as we would have no option than to live in hiding and continue to move from one city to another in order to avoid danger of being detected and harmed by her family.”
29. The Appellant's wife's statement of the same date appears at [AB/3-7]. That explains that she had previously been married for twenty years and was divorced religiously from her ex-husband. Her children from that marriage lived with their father (who is now deceased). I infer from her statement that she was at that time living in the UK as she goes on to say that she decided to travel to Pakistan after the divorce as she had “few family friends” living there. She there met the Appellant and married him

in a religious ceremony in February 2011. She returned to the UK and divorced her previous husband under UK law. She registered her marriage to the Appellant legally under Pakistani and UK law in February 2013. The couple lived together in Pakistan at the outset of their marriage. She says that her father and the rest of her family were “furious” about the marriage and said that she had “brought disgrace to the family”. She provides no explanation why that should be so.

30. The Appellant’s wife’s statement then goes on to set out the threats she says they have received as follows:

“7. In 2011, when I was living with my husband, I had concerns about my safety which I reported to local police station. I informed them that if any harm comes to me, my husband or my in laws, my family was to blame for it as they were against my marriage.

8. At one occasion while I was in Pakistan, my father in law received a phone call and was asked to send me back to the UK or my husband would be killed. My father in law panicked due to fear and he started to shout with other person on the phone. When my husband heard his father shouting on phone, he took the phone from my father in law and asked the person why he was fighting with my father in law. The man said that he should leave me or else he would kill my husband. My husband asked him who he was and why he was threatening [sic] my husband. That person told that he was from Pakistan and wanted to see my husband alone. After hearing this, I got worried and frightened. I took the phone from my husband and asked the person what his problem was. I then put the phone down. That man called again about 4 to 5 times. He was saying that my husband should meet him alone at a park site. My father in law said to that man that he himself would come to talk to that man and that my husband would not come. The man said that he would only talk to my husband. After arguing and shouting over the phone, that man gave his name as [AJ] from Gujranwala. He said that he had been paid money by my family to get my husband killed. We were shocked to hear this. Then, I spoke to him and asked why he would kill my husband for money. He replied that he was sorry as we were nice people and the only reason was that he was paid money. He even apologized and said that he was embarrassed for his conduct. He never called again.

9. After couple of months, when I was coming back to the UK, there was another phone call and I was warned that I would be kidnapped on my way to the airport. That threat made me and my husband very worried about my safety. At another occasion, we received threatening calls that we will be harmed.

10. After coming to the UK, my family remained against my marriage. They and my ex-husband were all involved in threats to my husband and me. Even in the UK, I was followed and threatened [sic].

11. My husband wanted to live in Pakistan however I persuaded my husband that we should move to the UK. My husband agreed to come here after receiving all those threatening phone calls and when his family insisted him to move to the UK. While living in Pakistan, we were unable to go out and live a normal life due to constant threat of harm.

12. In April 2015, my husband came to the UK following grant of leave to remain as my family member. We are living together in the UK since then. My siblings and

parents are still against my marriage. My ex-husband passed away on 01st January 2019.

13. I would like to mention that my family is still creating trouble for me and my husband. When I last travelled to Pakistan this year, my father went to the Police station here and lodged a complaint that my husband had forcefully abducted me against my wishes. This was an attempt by my father to get my husband in trouble here. My husband was contacted by the Police. I informed the Police that I was not abducted rather I was in Pakistan with my own free will. My father did not stop here, he continued to create troubles for me and my husband. We have reported the same to the Police. Although I attempted to obtain records from police by email and have made various phone calls however, I have not received police records. The log numbers are as follows:

Log No - 2126: 11/01/2019: My family reported to Police about my abduction

Log No - 1358: 16/01/2019: Informed Police about my whereabouts: PC Charlie

Log No - 1135: 02/08/2019: Spoke to staff Jayne.

14. I would like to mention that I do not have much faith in Pakistani Police and other law enforcement agencies. Despite registering my concerns in local police station there was no follow up or offer of protection from the police.

15. I would like to mention that I am concerned about our safety on our return to Pakistan. There have been cases where the family members were involved in the murder of their own daughters in Pakistan. The Pakistani Police has reportedly failed to protect the victims and has also colluded with the accused to cover up the crime”

31. I turn then to the documentary evidence which is produced in support of the claim. At [AB/11] is an email from the Appellant’s wife dated 22 March 2019 to PC Charlie which refers to the conversation which she says she had with him on 16 January 2019 as referred to in her statement and asking for a report of the incident. That does no more than confirm the evidence given in her statement that she spoke with this PC on that date (if indeed it does that as there is no response).
32. The second document was produced with the e-mail from the Appellant’s solicitors although it appears was also before Judge Row (see [20] of his decision). The document is unexplained by any statement from the Appellant or his wife (or indeed the person who wrote the letter who I understand was the Appellant’s father). It is a letter apparently addressed to the police station in Sadar, Faisalabad. The letter is dated 12 October 2012. It reads as follows:

“It is requested that applicant is residing at [address]. My son got married with Mrs Shamim Akhar through court marriage in District Court Faisalabad. But his wife’s family (above mentioned accused) threat to my son. On day they arrived at Faisalabad. My son was present at Jalvi Market Faisalabad to purchaser some house hold things. When my son feel fear. A lot of people present in market. Therefore my son runs away. The applicant and my son [RWA] and his family suffering from fear of life. If me and my family suffered any difficulties or bear any loss, then above mentioned accused will be responsible. Please action against.”

The person accused is the Appellant's father-in-law who is said to be resident in Gujra. The letter is said to be "approved" by the police with the annotation "Parties will present before me".

33. The incident described in that letter is not mentioned in the statements of either the Appellant or his wife. There is no statement from the Appellant's father about the circumstances in which that was written nor any mention of what occurred thereafter. The letter appears to indicate that the parties were told to present before the police, but it is not said whether they did. In the absence of any evidence supporting what is said in this letter, I am unable to give weight to it. In any event, it lends support to the suggestion that the police in Pakistan would be expected to offer protection (as to which see below).
34. Turning then to the evidence given to Judge Row, having referred to the broad outline of the Appellant's case in this regard and to the two documents which I have just dealt with, the Judge goes on to record the oral evidence given. He says that this was in accordance with the witness statements to which I have already referred. In addition, the Judge was told that the Appellant's wife goes to Pakistan every year. She said that she "spends considerable time there every year" ([24] of the decision). She travels alone to visit the Appellant's mother, but her father also lives in Pakistan.
35. I was not asked to hear oral evidence from the Appellant and his wife. Mr Tan did not ask to cross-examine them and, as I have already mentioned, the Appellant's wife was not present remotely in any event.
36. I am sceptical about the claims made which as Mr Tan points out came late in the day (only with the application in 2018). However, even accepting the claims at face value, I do not accept that they show to the relevant low standard which applies (real risk or reasonable likelihood) that the Appellant and his wife are at risk on return to Pakistan for the reasons which follow.
37. First, the threats which are said to have been made in Pakistan occurred in 2011 before the Appellant's wife came to the UK. The threats which the Appellant's wife refers to expressly at [8] of her statement are not mentioned by the Appellant in his statement but it must be inferred from what she there says that this was while she was still living in Pakistan (although I accept that she says that she continues to visit Pakistan and I assume did so in the time when she was living in the UK and the Appellant remained in Pakistan between 2011 and 2015). Importantly, though, the Appellant himself makes no mention of specific threats made to him of this nature or threats after his wife had come to the UK and before he came here. I have already noted the absence of corroboration of the incident referred to in the October 2012 letter. If threats were made, therefore, whilst the Appellant and his wife were in Pakistan that was many years ago.
38. Second, the Appellant's wife says that the threats which were made in Pakistan were made to her in-laws (the Appellant's parents) as well as to her and the Appellant.

There is no evidence from the Appellant's parents that they have continued to receive threats.

39. Third, even at the time when the threats were being made in Pakistan in 2011, those did not lead to any physical harm. Even on the one occasion when, according to the Appellant's wife, her father went so far as to pay someone to kill the Appellant, the Appellant's family was (somewhat implausibly it must be said) able to dissuade the prospective killer from that course.
40. Fourth, the Appellant's wife's evidence before Judge Row was that she travels on an annual basis to Pakistan in order to visit her in-laws. If, as she says, she considered herself and the Appellant to remain at risk as a result of the marriage and given that, on the Appellant's case, his in-laws are aware of and able to contact his own family, it is not credible that she would continue to make those visits.
41. Fifth, turning then to the threats said to have been made in the UK, the only express reference to events in the Appellant's wife's statement appear to relate to an incident which occurred in 2019. If, as the Appellant's wife said in evidence to Judge Row, and as the 2012 letter suggests, her father lives in Pakistan it is not entirely clear why he would be going to a police station in the UK. Leaving aside that inconsistency, that incident shows only that the Appellant's father-in-law was, as the Appellant's wife put it "creating trouble" for her and the Appellant. There is also no explanation why the Appellant's father-in-law would take this step nearly four years after the Appellant arrived in the UK to set up home with his wife in circumstances where the Appellant's wife says that she goes to Pakistan every year. There is no evidence of any similar incidents before or since.
42. It appears from the statement of the Appellant's wife that most of her family is in the UK. She says that her ex-husband is now dead but that the threat subsists from her siblings and parents. However, there is no evidence of any specific threats made to the Appellant and his wife since they came to the UK. There is no evidence from the Appellant's wife that she has reported specific threats to the police. There is no evidence that attempts have been made to harm the Appellant and his wife in the six years that they have lived together in the UK or the four previous years when they were married and the Appellant's wife was living in the UK, as I understand it, alone.
43. In any event, even taking the evidence of the threats at its highest, there is a functioning criminal enforcement and justice system in Pakistan. I recognise that the Appellant's wife says that she does "not have much faith" in the system. However, she says that she went to the police in 2011 and, taking the letter of 2012 at its highest, the Appellant's father similarly felt able to report the incident he describes to the police, presumably in the expectation that action would be taken. I do not place weight on the Appellant's wife's assertion that the system cannot be relied upon because "there was no follow up or offer of protection". Her account is only that she "had concerns" which she reported to the police, warning that her family would be

to blame if she was harmed. It is difficult to see what action the police could have been expected to take.

44. The test for a sufficiency of protection is in any event not an absolute one. As was said by Lord Hope in Horvath v Secretary of State for the Home Department [2000] UKHL 37 “[t]he standard to be applied is ... not that which would eliminate all risk and would thus amount to a guarantee of protection in the home state. Rather it is a practical standard, which takes proper account of the duty which the state owes to all its own nationals.”
45. I accept as shown by the report of two incidents at [AB/14-24] that there are reports of honour killings in Pakistan which go unpunished. Even those reports show that the police take action, but they do suggest that convictions may not follow. However, in this case, the Appellant’s family who she says she fears are in the UK (with the possible exception of her father). She has in any event been willing and able to make annual trips to see her mother-in-law (the Appellant’s mother) without incident.
46. That brings me on to the final reason why I do not accept that the Appellant and his wife are at risk on return to Pakistan. They do not need to return to the area where the Appellant’s father-in-law lives (if indeed he still lives in Pakistan and not the UK). They do not even need to return to the area where the Appellant’s family lives if they consider themselves at risk there (although such would be inconsistent with the annual trips which the Appellant’s wife makes to see her mother-in-law). Pakistan is a sizeable and populous country. The Appellant and his wife could relocate to another part of that country. There is no evidence that the Appellant’s wife’s family have any connections which would enable them to trace her and the Appellant on return.
47. For those reasons, I do not accept that the Appellant and his wife are at risk on return to Pakistan from her family. It follows that this is not an obstacle, let alone an insurmountable one, preventing family life being continued in Pakistan. Family life could be continued in that country.

Balancing Assessment

48. I take into account my findings above in relation to family life. As I have there found, the claimed risk on return and medical conditions relied upon do not constitute obstacles to return to Pakistan for either the Appellant or his wife.
49. The Appellant’s wife is clearly familiar with the culture of Pakistan as her regular visits and willingness to live there at the beginning of her marriage to the Appellant demonstrate. I accept that she is a British citizen. I accept that she may prefer to remain in the UK, but her citizenship is not of itself a factor which renders removal of the Appellant to be disproportionate (see in that regard Agyarko and Ikuga v Secretary of State for the Home Department [2017] UKSC 11 at [33]). Although the Appellant’s wife says in her statement that she was born in the UK, has spent “almost all” of her life here and considers it her home, it is notable that, when her

first marriage broke down, she decided to go to live in Pakistan. She also visits that country on a regular, annual basis and spends some time there. The Appellant's wife also says in her statement that she has "a reasonable regular income" from employment which she says is sufficient to support her and the Appellant but says nothing about the nature of that employment. The application leading to the decision under appeal indicates that she earns £21,000. I also accept that the Appellant's wife has family in the UK but, of course, her evidence and the Appellant's case is that she is estranged from that family. None of those factors taken individually or cumulatively are such as to lead to a finding that she could not go to live in Pakistan.

50. The Appellant's wife may not wish to go to live in Pakistan and it is of course her choice whether she accompanies the Appellant. She cannot be obliged to go. However, it is reasonable to expect her to do so. Family life can for those reasons be continued in Pakistan. There will therefore be limited interference with the continuation of family life occasioned by removal (as opposed to that caused by any choice made by the Appellant's wife not to accompany him).
51. The Appellant has family in Pakistan. He says that he is "deeply integrated into British society" but I have no evidence about that. The Appellant is aged thirty-one years. He lived in Pakistan until 2015 and has been in the UK for only just over six years. The Appellant will be able to continue his family life with his wife in Pakistan (assuming she decides to accompany him). There is no detailed evidence before me about the extent of his private life which demonstrates any strength of that private life. The private life which he has (on the evidence such as it is before me) can be replicated in Pakistan.
52. I am required to have regard to the public interest factors in Section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B"). Those potentially relevant to this case are as follows:

"117B Article 8: public interest considerations applicable in all cases

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
 - (a) are less of a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
- (4) ...

- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) ...”

- 53. Although I do not have evidence before me that the Appellant's wife's earnings are sufficient to meet the income threshold requirement of the Rules (other than the bare assertion in the application form), the Respondent has not taken issue with this aspect of the Rules in the decision under appeal. I have no evidence that the Appellant has had recourse to public funds (other than obtaining healthcare which I assume from the reference in the medical records to his NHS number has been provided by the National Health Service). I am prepared to accept for current purposes that he is financially independent. Although I did not hear evidence from the Appellant, I was told that he and his wife did not require an interpreter to give evidence and therefore I also assume for current purposes that he speaks English. However, both factors are neutral.
- 54. The Appellant is an overstayer. Although I accept that he came to the UK lawfully as a spouse (and for that reason Section 117B (4) has no application to this case), his leave came to an end in 2016 and he has remained here since unlawfully. Even prior to 2016, the Appellant's status in the UK was precarious. He may have expected that he could remain in the UK as a spouse but that depended on him continuing to meet the Rules. As a result of his precarious and unlawful status, I can give little weight to the Appellant's private life when balancing the impact of removal. In any event, as I have already pointed out, I have no detailed evidence on which to assess the strength of that private life.
- 55. The Appellant has overstayed because he was unable to meet the Rules. He was unable to do so because the Respondent refused leave to remain in 2016 due to the false bank statements. It is now accepted that the Appellant used statements in support of his application which had been altered in relation to the transactions. Although I do not have the detail of why the alterations had been made, given the nature of the application and the requirement which those were provided to support, I can only infer that the alterations were made to show that the Appellant's wife earned a sufficient amount to meet the income threshold requirement of the Rules when she did not in fact do so.
- 56. In this case, the Appellant fails to meet the Rules not only because he has unlawfully overstayed his leave, but also because he fails on suitability grounds because he has used documents which have been altered in order to try to circumvent the requirement of the Rules. The public interest in his removal based on the need to maintain an effective immigration control system is for that reason strengthened.
- 57. Balancing the limited interference which removal of the Appellant will cause to his family and private life, taking into account also the impact of that removal on the Appellant's wife against the strong public interest in removal, I am firmly persuaded that the interference is in this case amply justified and proportionate. For that reason, the Appellant's appeal on human rights (Article 8 ECHR) grounds fails.

CONCLUSION

58. The Respondent's decision to remove the Appellant does not breach section 6 Human Rights Act 1998 (Article 8 ECHR). The Appellant did not make a protection claim other than in the context of his Article 8 claim. Accordingly, there is no appeal on protection grounds. The appeal is therefore dismissed on human rights grounds.

DECISION

The appeal is dismissed on human rights grounds

Notice to Show Cause (Lee Valley Solicitors)

Further to the decisions in R (Hamid) v Secretary of State for the Home Department [2021], R (Sathivel & Ors) v Secretary of State for the Home Department [2018] EWHC 913 and R (Shrestha) v Secretary of State for the Home Department [2018] UKUT 00242, Lee Valley Solicitors are directed to file a signed, written response to the following points within 28 days from the date when this decision is sent:

- (1) Lee Valley Solicitors shall identify the caseworker responsible for the Appellant's case, and if they are not a qualified solicitor, the firm shall also identify the solicitor who is responsible for supervising the caseworker.
- (2) The caseworker or supervising solicitor shall explain the following matters:
 - (a) Why the Tribunal was informed that the solicitors had not received the e-mail from the Respondent dated 20 October 2020 and what checks were made before the Tribunal was so informed (see [6] to [8] of the decision above);
 - (b) Why the Tribunal was informed on several occasions (including in the First-tier Tribunal and the grounds of appeal) that the Appellant's case was that the bank statements were genuine and correctly held to be so when it was accepted on behalf of the Appellant at the resumed hearing that they were accepted to be fraudulent (see [13] to [16] of the decision above).

Failure to respond to these directions will lead to the matter being referred to the Solicitors Regulation Authority.

Signed *L K Smith*
Upper Tribunal Judge Smith

Dated: 22 June 2021

APPENDIX: ERROR OF LAW DECISION



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

Appeal Number: HU/11958/2019 (P)

THE IMMIGRATION ACTS

**Decided under Rule 34 without a hearing
On Tuesday 22 September 2020**

Determination Promulgated

.....

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR WALEED AHMAD

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of the First-tier Tribunal Judge Row promulgated on 4 November 2019 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 25 June 2019 refusing his human rights claim, made in the context of an application to remain in the UK with his spouse.
2. The Appellant is a national of Pakistan. He entered the UK on 5 April 2015 with entry clearance as the husband of Mrs Shamien Asghar. He applied within time for

further leave but that was refused on 13 August 2016 on the basis that the Appellant had produced a false document, namely a bank statement said to relate to his wife's bank account. Thereafter he became an overstayer. For that reason, when the Judge came to consider the Appellant's case within the Immigration Rules ("the Rules"), he had to decide whether there were insurmountable obstacles to the Appellant's family life with his wife continuing in Pakistan (applying paragraph EX.1 of Appendix FM to the Rules). He concluded that there were not.

3. The Judge also rejected the Appellant's case outside the Rules and took into account in that regard the public interest in the maintenance of immigration control. It is however notable that, in the absence of evidence from the Respondent concerning the bank statement said to be falsified and relied upon in the Appellant's earlier application, the Judge found that he "was not satisfied on the evidence before me that a forged bank statement had been provided in connection with the application". For that reason, he also concluded that the Respondent was wrong to refuse the present application on suitability grounds within the Rules.
4. As the Appellant points out in his grounds of appeal, he was not given a right of appeal against the refusal of his earlier in-time application because his human rights claim was certified under section 94 Nationality, Immigration and Asylum Act 2002. As such, the issue whether the bank statement was a false document had not previously arisen for independent consideration. The Appellant's very short point is that, had the Judge properly factored into account the finding that the bank statement was not false, he would and should have taken into consideration that, but for the allegation made by the Respondent in that regard, the Appellant would have succeeded in his earlier application and would not therefore have overstayed. The Appellant says that the Judge should have taken into account the "historic injustice" perpetrated and given weight to that injustice.
5. Permission to appeal was refused by First-tier Tribunal Judge Saffer on 27 February 2020 on the basis that "[t]he grounds have no merit as the Appellant became an overstayer, not by virtue of the document that the Judge found had not been established as being fraudulent, but as his leave had expired."
6. Permission to appeal was granted on limited grounds by Upper Tribunal Judge Coker on 15 April 2020 in the following terms:
 1. The grounds of appeal that the judge failed to consider an historic injustice is without merit. The respondent took a decision and, on the basis of that decision refused the appellant's human rights application. There is no arguable historic injustice. Permission to appeal on that ground is refused.
 2. It is arguable that the FtT judge erred in his assessment of the proportionality of the decision, the decision the subject of the appeal having been based upon a false premise namely that the appellant had submitted a false bank statement. It is arguable that the refusal of the original application which had led to the present appealable decision being made following an application being made when the appellant was an overstayer was a matter that should have been factored into the FtT decision on proportionality. It is not apparent from the FtT

decision that the judge factored into his decision-making process the accurate history of the human rights claim.

3. Permission is granted on limited grounds only.”

7. When issuing her decision granting permission to appeal, Judge Coker gave directions indicating her provisional view that it would be appropriate to determine without a hearing (pursuant to Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008 – “the Procedure Rules”) the following questions:
 - (a) whether the making of the First-tier Tribunal’s decision involved the making of an error of law and, if so
 - (b) whether that decision should be set aside.

Directions were given for the parties to make submissions in writing on the appropriateness of that course and further submissions in relation to the error of law. The reasons for the Note and Directions was the “present need to take precautions against the spread of Covid-19, and the overriding objective expressed in the Procedure Rules”.

8. Neither party has made any submissions either expanding on or responding to the grounds of appeal or as to the appropriate means of determining the error of law issue.
9. The Tribunal has the power to make a decision without a hearing under rule 34 of the Procedure Rules. Rule 34(2) requires me to have regard to the views of the parties. In this case, neither party objects to this course. The exercise of my discretion is subject to the overriding objective in rule 2 to enable the Tribunal to deal with cases fairly and justly.
10. The issue is, as I have explained, a short one and the grounds challenging the Decision are similarly narrow. Permission to appeal has been granted only on one limited issue. It is therefore difficult to see what more could be said about that, certainly at the error of law stage. I have all the necessary documents to determine that issue, namely the terms of the Respondent’s refusal of the Appellant’s in-time application and the terms of the refusal decision under appeal.
11. Although it is possible for the Tribunal to hold remote hearings and even limited face-to-face hearings at the present time, its capacity to do so is reduced from what would normally be available. The convening of an oral hearing is accordingly likely to lead to some delay in the determination of this appeal. I have therefore reached the view that it is appropriate to deal with the error of law issue on the papers and without an oral hearing.
12. At this stage, the issue for me is whether the Decision contains an error of law. If I conclude it does, I need to consider whether I should set aside the Decision based on that error. If I decide to do so, I would either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

DISCUSSION AND CONCLUSIONS

13. The Appellant's in-time application for further leave to remain as a spouse was refused on 24 June 2016. In relation to the bank statement, the Respondent said this:

"To meet the financial requirements you provided Barclays bank statements for your partner. Internal checks by the Home Office with the issuing body state that the documents are fraudulent therefore you fail the above requirement."

No supporting documentation was provided with that decision letter. As the Appellant rightly points out, there was no right of appeal against that decision because the claim was certified. There is no indication that the Appellant sought to challenge the decision by judicial review or that otherwise the Respondent produced any documents to support what is there said.

14. As a result of the allegation of fraud, the Respondent refused the application on grounds of suitability. She also rejected the application on grounds of eligibility as the false statement could not be used to evidence the claimed income of the Appellant's spouse in order to meet the income threshold under the Rules. The Respondent went on to consider whether there were insurmountable obstacles to the couple continuing family life in Pakistan (although strictly that does not apply where an application is refused on suitability grounds). The Respondent concluded that there were no such obstacles. The application was considered on the basis of the Appellant's private life and outside the Rules but refused also in that regard. Significantly, it is not suggested that the Appellant's relationship with his wife was other than genuine and subsisting and it was not suggested that the Appellant did not meet the provisions of the Rules for leave to remain other than in relation to suitability and income. Of course, if the bank statement were genuine and accepted, it may well be that the Appellant could have established his wife's earnings and been granted leave to remain (depending what the statements showed).
15. In relation to the application leading to the decision under appeal, the Respondent once again refused on suitability grounds. She also now added the failure to meet the eligibility requirements due to the Appellant's overstaying. As Judge Saffer rightly pointed out, as a matter of fact, the Respondent was correct that the Appellant was by this stage an overstayer. However, as Judge Coker pointed out, the Judge having found that the bank statement was not in fact false (due to lack of evidence from the Respondent who was represented), an issue arises as to why the Appellant was an overstayer.
16. Although I consider that Judge Coker is right to say that this case does not involve historic injustice in the way in which that is asserted in the grounds, it is nonetheless the case that when the Judge came to consider the appeal outside the Rules, he needed to take into account the factual basis of the case. The Judge's conclusions in relation to public interest are as follows:

"38. The maintenance of effective immigration controls is in the public interest. Reasonable provisions are contained in the Immigration Rules to enable the appellant to live in the United Kingdom with the sponsor. He does not meet

those requirements. He has remained in the United Kingdom unlawfully after his leave expired. This weighs heavily against him in assessing proportionality.

39. Taking all these matters into account I find that the public interest in removing the appellant from United Kingdom greatly exceeds any interference with his family or private life. Whilst I accept that the appellant has a family and private life in the United Kingdom which are interfered with by the decision under appeal I find that the interference is lawful. I further find such interference is necessary in a democratic society both for the economic well-being of the country and for the protection of the rights and freedoms of others and that the interference is proportionate to these legitimate public ends on the facts of this appeal.”

17. The Judge was right to say that the Appellant was, at the time of his application on this occasion, in the UK unlawfully. However, having found that there was no evidence to show that the bank statement relied upon to support the earlier refusal was in fact forged, the Judge failed to factor into the equation that, but for that allegation, the Appellant would likely have succeeded. In other words, he failed to take account of the factual basis of the case and the reason why the Appellant was, at the time of this application, in the UK unlawfully. The Appellant had sought to regularise his stay within time. There is no recognition of that fact nor the finding that the reasons given for refusal on that earlier occasion were unsubstantiated by the Respondent. Those considerations were relevant to the public interest.
18. For those reasons, I find an error of law in the Decision. Once the Judge had reached the finding he did about the bank statements, it was incumbent on him to take that finding into account when determining the appeal, particularly when considering the public interest and assessing the proportionality of removal. That error is one which is capable of affecting the outcome. It does not however automatically mean that the Appellant will succeed. I therefore set aside the Decision, but I have given directions below for the appeal decision to be re-made. It can be re-made in this Tribunal as the issues and factual findings required are narrow.
19. The Respondent may wish to consider this case on its facts and, in particular, to review whatever evidence there was about the bank statements in 2015/2016. If that were the only reason why the application failed on that occasion (as appears to be the position from the refusal letter) and if there is no cogent evidence about the falsity of the bank statements, the Respondent may wish to consider whether the appeal should continue to be resisted. I have though given a direction for the Respondent to produce the bank statements and the remainder of that application and supporting evidence if she continues to wish to defend this appeal so that the proportionality issue can be reconsidered on a correct factual basis.

CONCLUSION

20. For the above reasons, I am satisfied that the grounds disclose errors of law in the Decision. I therefore set aside the Decision. I give directions below for a resumed hearing in this Tribunal.

DECISION

I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Row promulgated on 4 November 2019 is set aside. I give directions for a resumed hearing below.

DIRECTIONS

1. Within 28 days from the date when this decision is promulgated, the Respondent shall file with the Tribunal and serve on the Appellant any evidence on which she relies in support of the allegation that the bank statements submitted with the 2015 application and concluded to be fraudulent were in fact false. At the same time, she shall file with the Tribunal and serve on the Appellant a full copy of the application made by the Appellant on 23 September 2015 which led to the refusal decision dated 24 June 2016 along with all supporting documents together with any written submissions which she wishes to make in relation to this appeal. Those submissions should also include joining details for Skype for Business and a contact telephone number for the Respondent's representative for the hearing and the Respondent's submissions as to the way in which the hearing should be conducted (via remote means or face-to-face).
2. Within 28 days from the date when the material in [1] above is filed and served, the Appellant shall file with the Tribunal and serve on the Respondent any further evidence on which he wishes to rely and any written submissions which he wishes to make in relation to this appeal. Those submissions should also identify the witnesses who are to be called to give evidence, indicating whether any of those witnesses require an interpreter and setting out the Appellant's position as to the way in which that hearing should be conducted (via remote means or face-to-face). The Appellant shall also include joining details for Skype for Business and a contact telephone number for those who it is intended should attend the resumed hearing to permit the resumed hearing to be listed remotely should that be the Tribunal's decision.
3. The Tribunal will then give notice as to the form of the re-hearing. The re-hearing will not be listed until after 30 November 2020.
4. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents which should continue to be sent by post.

5. **Service on the Secretary of State may be to [email] and on the Appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.**
6. **The parties have liberty to apply to the Tribunal for further directions or variation of the above directions, giving reasons if they face significant difficulties in complying.**

Signed *L K Smith*
Upper Tribunal Judge Smith

Dated: 23 September 2020