



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/14886/2019 (V)

THE IMMIGRATION ACTS

Heard by Skype for business
On the 17 March 2021

Decision & Reasons Promulgated
On 29 April 2021

Before

UPPER TRIBUNAL JUDGE REEDS

Between

AJ
(ANONYMITY DIRECTION MADE)

Appellant

AND

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R O’Ryan, Counsel instructed on behalf of the appellant.

For the Respondent: Mr C Avery, Senior Presenting Officer.

DECISION AND REASONS

Introduction:

1. The appellant, a citizen of Pakistan, appeals with permission against the decision of the First-tier Tribunal (Judge O’Hanlon) (hereinafter referred to as the “FtTJ”) who dismissed her human rights appeal in a decision promulgated on the 16 December 2019.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances that refer to issues that may be relevant to a protection claim although within a claim made on human rights grounds. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.
3. The hearing took place on 17 March 2021, by means of *Skype for Business* which has been consented to and not objected to by the parties. A face-to-face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. The advocates attended remotely via video as did the appellant so that she could listen and observe the hearing. There were no issues regarding sound, and no technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

Background:

4. The history of the appellant is set out in the decision of the FtTJ, the decision letter and the evidence contained in the bundle.
5. The appellant is a national of Pakistan. She lived with her mother in Pakistan. Her parents were separated and her father had moved to Saudi Arabia. He was married for a second time and was not in contact with the family in Pakistan. On 9 May 2008 in Pakistan she married a British citizen and they lived there as a married couple. Shortly after the marriage he returned to the United Kingdom.
6. The appellant applied to enter the United Kingdom in November 2008 as a spouse.
7. Whilst waiting for a decision on that application, the appellant received a communication from her husband containing a divorce certificate issued by the Sharia Islamic Council dated 19 January 2009. There was only one line written in the communication stating that he was sorry and he could not continue with the marriage.
8. The appellant's account is that following this divorce, her family were against her and her mother. It is said a large amount of her mother's savings which she had saved had been exhausted and the dowry that had been provided was not returned.
9. On 16 February 2009, the appellant's mother was said to be "curious to know the reason of divorce" and decided to come to the United Kingdom. She wanted to find out the reason for the divorce and ask about the amount of dowry given

to the husband. However when she entered the United Kingdom she found that the appellant's former spouse and his mother had relocated to another address in the UK without leaving a forwarding address.

10. The appellant informed the authorities that she was no longer in a relationship with a British citizen and it appears that her spousal visa was cancelled.
11. In 2009, the appellant was in Pakistan and her mother was in the United Kingdom. It is said that there was a "suffocated atmosphere everywhere created by maternal and paternal families in by other extended families". It is said that there was no one left who could support our protector from family members who were always criticising her over the sudden breakup of her marriage". It was claimed that members of the family forced her time and again to get a second marriage but she refused.
12. On 12 September 2012, the appellant came to United Kingdom with entry clearance as a student valid until 12 September 2016.
13. The appellant's mother, after entering the United Kingdom, married a settled person the United Kingdom. The appellant lived with her mother and her stepfather.
14. On 25 May 2016, the appellant's leave was curtailed so as to expire on 24th of July 2016.
15. On 24 May 2019, the appellant made a human rights claim in an application for leave to remain in the UK on the basis of her private life. Accompanying the application was a letter from her solicitors dated 21 May 2019.
16. In that letter, there was a section entitled "statement of facts and background" which made reference to her factual history as set out above. The basis of the application was the appellant could not return to Pakistan she did not have any family, friends or other relatives who are residing in that country. It was said that if "she had not come to the UK and are chosen to live in Pakistan, she had been forced to second marriage." It was said that "she had no qualifications or experience to earn subsistence and no property". It was claimed that she was living in the United Kingdom with her mother and stepfather and that she has spent a substantial part of her life in the UK.
17. The respondent refused her claim in a decision letter dated 22 August 2019.
18. The decision set out her immigration history and considered her application under the private life rules under Paragraph 276 ADE (1) noting that she was a national of Pakistan who entered the UK on 12 September 2012 and therefore had lived in the UK for six years and eight months. She was over the age of 18 but not aged between 18 and under 25 years and therefore could not satisfy paragraph 276 ADE (1) (iii), (iv) or(v). It was also considered that there were no very significant obstacles to her integration if required to leave the UK because

at the time of the application she was 28 years of age and in the absence of any evidence this was the country she had spent most of the first 21 years of her life living in Pakistan. It was considered that she would still have the social and cultural ties to assist her integration into life there which had been a significant period including all of her formative years and the start of her adult life.

19. As to whether there were any circumstances which resulted unjustifiably harsh consequences for her, the respondent took into account her claim that she feared return to Pakistan as her family would not support her due to her previous marriage to a British citizen which had ended. The respondent took into account her claim that she was residing with her mother in the UK that she would not have any source of livelihood through which to survive if returned to Pakistan or any qualifications to enable her to earn a living.
20. The respondent considered that in relation to her claimed fear on return, she had been provided, along with her representative on 8 August 2019, details to enable her to make a claim for asylum. However she had not made any claim or attended a screening appointment therefore her claim were not assessed on that basis.
21. The respondent considered there was nothing to show she could not return to Pakistan and live as an independent adult in her own right and would be able to obtain employment and accommodation to support herself in Pakistan. She entered the UK as a student on a temporary basis with no legitimate expectation that she would be able to remain in the UK indefinitely. Thus she could use the knowledge and experience gained during her time in the UK as a student to assist in finding employment in order to support herself in Pakistan will stop the respondent considered that she could reside separately from any other family members in Pakistan if they would not support. Her claim was therefore refused.
22. The appellant appealed that decision to the FtT (Judge O'Hanlon) on the 27 November 2019. In a decision promulgated on 16 December 2019 he dismissed her appeal.
23. Whilst the appellant had been represented by solicitors, at the hearing before the FtTJ the appellant was unrepresented. The solicitors had provided an appellant's bundle containing witness statements for the appellant and her mother and copies of other documents.
24. The FtTJ heard evidence from the appellant and her mother both of whom confirmed that the contents of their witness statements were correct and relied upon those statements. They were also cross-examined by the presenting officer.
25. At paragraph 16 (a)- (o) the FtTJ set out the appellant's case as followed by the respondent's case.

26. The FtTJ's analysis and factual findings are set out at paragraphs [20]- [32]. They can be summarised as follows:-

- (1) The FtTJ found that the documents sent by the appellant's representatives were unclear and that the application form had set out that the appellant was applying for an extension of her stay in the UK "outside the immigration rules because of compassionate and compelling circumstances" and that the covering letter said that the appellant did not meet the requirements for leave to remain on the grounds of private life under paragraph 276 ADE. However, he noted that the grounds of appeal paragraph 8 referred to there being "significant obstacles to integration". Notwithstanding this, the judge reached the conclusion that in fairness, her appeal before the Tribunal should be considered both in accordance with the immigration rules and outside the rules.
- (2) The appellant could not satisfy the requirements leave to remain on the grounds of family life under Appendix FM; she is an adult and does not have a partner or child (at [22]).
- (3) The appellant cannot meet paragraph 276 ADE (1) (iii) , (iv) (v) of the immigration rules on grounds of either age or length of residence in the United Kingdom. The appellant is aged 29 years of age.
- (4) As to paragraph 276 ADE (1) (vi) and whether there were very significant obstacles to her integration into Pakistan if she were required to leave the United Kingdom, the judge found that she was 28 years of age at the time of the application and had come to the UK in 2012 and therefore spent the first 20 years of her life in Pakistan. She therefore spent the significant bulk of her life including her formative years and her early years as a young adult in Pakistan. On the basis of the evidence, the appellant had undergone some education Pakistan. There was no information to say that she had any significant health issues and that she been brought up in the culture of Pakistan although she had been in the UK since 2012. The judge found that he did not consider that the period of departure would mean that she lost contact with the culture of Pakistan. She spoke Urdu as was shown by her requirement for interpreter at the hearing (at [23]).
- (5) The FtTJ also considered that she would be returning to Pakistan as a single divorced woman. Whilst the appellant and has suggested that she would be at risk in the event of return to Pakistan, the judge noted that she had not made any protection or asylum claim in that respect nor did she do so when she first entered the United Kingdom in 2012. The judge stated "in considering this aspect, I note that the appellant stated that her problems began following her divorce in 2009 but that she had continued to reside in Pakistan until entering the United Kingdom on a student Visa in 2012. Although the appellant stated she was pressured by members of the family to marry other people, I do not consider that the appellant's concerns in this

respect will be sufficient to amount to something significant obstacles to her integration to Pakistan in the event of return.”

- (6) The judge considered the Home Office country information and guidance- Pakistan: women fearing gender-based harm/violence of February 2016, paragraph 3.1.2 which stated that there is in general, effective state protection likely to be available for women fearing gender-based violence.
- (7) The judge concluded that having considered all of these factors, he did not find that they would be very significant obstacles to the appellant’s integration into Pakistan in the event of return and found that she did not satisfy the requirements for private life seemed paragraph 276 ADE (1) (vi) (at [23]).
- (8) The FtTJ went on to consider the application applying the structured assessment in *Razgar*.
- (9) The FtTJ took into account that the appellant had established a private life having been resident in the UK for seven years although he noted that he had not received any details as to the extent of that private life but was prepared to accept that having lived in the UK for seven years it will have “in all likelihood have resulted in establishing behaviours and relationships consistent with the establishment of a private life to some degree.”
- (10) As to family life, the judge found that the appellant was an adult. The FtTJ found that it was clear from the evidence and that of her mother that there was a close relationship between the appellant and other, when applying the decision of *Kugathas v SSHD* [2003] INLR 170, found that there was a degree of family life between the appellant and her mother. The appellant came to the United Kingdom in 2012 following her divorce from her marriage in 2008. The appellant was still residing with the mother and the FtTJ found that the ties between them went beyond those which an adult child normally would have with a parent and accordingly he found an element of family life between the appellant and her mother. (at [25]).
- (11) When considering the issues of proportionality, the FtTJ applied the section 117 public interest considerations.
 - He found as a strong factor against the appellant that she could not meet the requirements of the immigration rules.
 - In accordance with section 117B little weight was given to the private life of the appellant as it had been established after her leave to remain was curtailed as to expire on 24 July 2016.
 - As to her language abilities, whilst she had some understanding of English, it was necessary for to her have the assistance of a court

interpreter which suggested that the appellant was not yet fluent in her understanding and speaking of English (s117B(2)).

- Little evidence had been put before the tribunal by the appellant of establishment of a private life; the appellant is not currently studying and there was no evidence about a circle of friends. The judge concluded on the basis of information received, that any private life the appellant may have established would be closely linked to her family life (at [28]).

(12) The FtTJ set out his conclusions at [29]-[32] as follows:

- The maintenance of effective immigration control is in the public interest.
- Although the appellant may be speak some English it was clear by her request an interpreter that she has difficulties in speaking/and/or understanding English.
- She came to the United Kingdom as a student and therefore had not been given any expectation of a right to remain in the UK.
- The appellant is not financially independent. Although the bundle contains details of the appellant's mother's husband's finances, no information been provided as to the appellant's financial situation. There is nothing to suggest that she is financially independent.
- Although she been in the United Kingdom in 2012, the bulk of her life had been spent in Pakistan.
- In all of the circumstances, he concluded the weight to be attached to the public interest outweighed the appellant's rights under article 8 of the ECHR.
- The judge considered the compassionate circumstances which were put forward namely the closeness of the relationship with the mother and other members of the appellant's mother's husband's family in the UK. The judge found that there were not sufficient compelling compassionate reasons to justify grant of leave to remain outside of the immigration rules.
- He concluded that the refusal of her application for leave to remain would not result in unjustifiably harsh consequences for the appellant and the weight to be attached to the public interest outweighed the appellant's qualified rights.
- He therefore dismissed the appeal.

27. Permission to appeal was sought and permission was refused by FtTJ Easterman but on renewal was granted by the Upper Tribunal on 10 June 2020 for the following reasons;

“The appellant is represented and with that in mind I have given the grounds their widest possible reading.

I grant permission because it is arguable that the tribunal has failed to take all material evidence into account when reaching the conclusion (at its 23] that forced marriage would not constitute a “very significant obstacle to integration” because the appellant could avail herself of the general protection of the Pakistani state. It is arguable that the First-tier Tribunal has failed to consider whether such protection, in the particular case of the appellant would be forthcoming.”

The hearing before the Upper Tribunal:

28. In the light of the COVID-19 pandemic the Upper Tribunal issued directions *inter alia*, indicating that it was provisionally of the view that the error of law issue could be determined without a face-to-face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties. I am grateful for their assistance and their clear oral submissions.
29. Mr O’Ryan of Counsel appeared on behalf of the appellant and relied upon the written grounds of appeal and the written submissions.
30. In his oral submissions, he submitted that the FtTJ considered the issue of pressure placed upon the appellant to undergo a forced marriage at [23]. In doing so, he made reference to the CPIN guidance note 2016 and quoted from one paragraph at 3.1.2 which stated that there is in general, effective state protection likely to be available for women fearing gender-based violence.
31. He submitted that UTJ considered the grounds of appeal giving them the widest possible meaning and granted permission on the basis that it was arguable that the tribunal failed to take into account all material evidence on reaching the conclusion that forced marriage would not constitute a very significant obstacle.
32. In this respect, the appellant’s case is that the judge erred in his consideration of the evidence. Firstly, he erred by electing himself to make reference to the CPIN which had not been provided by the parties but relied on only one passage from that document when there were other aspects pointing to a different interpretation as set out at paragraph 20 of the written submissions. References are made there to paragraph 2.3.1, that Pakistan is ranked as the third most dangerous place in the world for women, and one of the most unequal, violence against women is widespread, be domestic violence, sexual abuse and

harassment, acid attacks, forced marriages, forced conversion and honour killings.” Further reference is made to 2.3.5 where reference is made to violence against women including diary disputes, kidnappings, child marriage, acid and bird attacks and forced marriages.

33. Mr O’Ryan relied upon his written submissions that made reference to the relevant CG decisions set out in detail at paragraphs 20 and 21 which included the decision in *SM (lone women – ostracism) Pakistan* CG [2016] UKUT 67. In reference to this, he submitted that where a risk of persecution or serious harm exists in a home area for single woman there may be an internal relocation option to one of Pakistan’s largest cities depending on the family, social and educational situation of the woman in question.
34. He submitted that the judge was an error by failing to take into account all material evidence when reaching the conclusion that forced marriage would not constitute a very significant obstacle to integration for the appellant because she could avail herself of the general protection of the Pakistani state.
35. In reaching that conclusion, the judge referred to the CPIN, a publicly available document but having done so he was selective as to what elements of that evidence he decided to take into account. Thus by referring only to one passage and 3.1.2, the judge erred in law in failing have to regard to other passages a report which strongly pointed to a conclusion opposite to the one reached by the judge; i.e. passages pointing to a significant risk of harm to single/divorced women by way of forced marriage and that there was no effective protection from the risk (relying on paragraphs 2.3.1, 2.3.5, 2.4.1 – 2.4.3, 5.11, 7.3.1).
36. He submitted that the CPIN also directed attention to the relevant country guidance as to the risk of harm to lone women in Pakistan, including from forced marriage or other gender-based violence (see *SM (lone women – ostracism) Pakistan* CG [2016] UKUT 67, but that the FtTJ failed to have regard to the relevant considerations as to the assessment of such risk, set out in the headnote.
37. He submitted that the FtTJ erred in law by failing to look at the wider evidence and whilst this was not a protection appeal but a human rights appeal the claim advanced is based on there being very significant obstacles to reintegration and thus the consideration of a forced marriage and the circumstances were relevant to that issue that the judge had not considered them adequately.
38. Mr O’Ryan also submitted that the FtTJ had erred in law by failing to make findings of fact determining what level of risk of forced marriage would occur and if there was a risk, he erred in law in misdirecting himself by finding that any such risk did not amount to a significant obstacle to integration.
39. There were initial written submissions issued on behalf of the respondent dated relied upon by Mr Avery. Much of those submissions were directed to the point raised that permission had been granted for a reason not advanced by the

appellant on the grounds nor based on a submission advanced before the FtTJ in the substantive hearing.

40. As to the merits of the appeal themselves, it was submitted that the FtTJ cited paragraph 3.1.2 of the CPIN and the finding was not a perverse finding when seen in the light of the other five factors considered at paragraph 23 for example that she spent the first 20 years and I have in Pakistan, she was educated in Pakistan, there are no health issues, she spoke Urdu and there was no protection claim.
41. Dealing with the grounds as drafted, it was submitted that the judge impermissibly limited his consideration of proportionality is that of private life. This was not correct when looking at [31] where the judge considered the compassionate factors including the closeness of the appellant's relationship with her mother and other members of the appellant's mother's husband's family in the United Kingdom.
42. Thus it was submitted that in the absence of any very significant obstacles, the judge was aware of the closeness to her mother but it was not disproportionate for the appellant to properly particularise her claim and make an application for asylum should she claim that it was not safe for her to return to Pakistan.
43. Mr Avery, in his oral submissions submitted that the issue was a narrow one and concerned the judge's approach to the claim. He submitted that the judge had been a difficult position as the appellant's evidence was thin. There was a reference in the original application form and in the witness statement but the factual account did not amount to much by way of a protection claim and that all she had established was she was "suffocating" alongside her family and was not evidence which was sufficient to establish a protection claim.
44. He submitted the risk the appellant from the outset was slight in terms of the evidence. The appellant had not put in any evidence as to her circumstances in Pakistan and the judge did his best by looking at the CPIN report.
45. Mr Avery submitted that the factual findings made by the judge did not establish a protection claim or that she was at risk of harm. He submitted that the judge took into account that the appellant had remained in Pakistan after divorce in 2009 - 2012 and that this was a factor in the judge's assessment. He also stated that the evidence as to "pressure" was not sufficient to constitute proper evidence of risk of harm.
46. He submitted that even if the appellant was in need of protection the onus was on the appellant to establish that as set out at 2.4.2 and that "the onus is on the person to demonstrate why they would be unable to access effective protection". This is not been established in the appellant's case and there was a lack of evidence before the judge on the impact of the appellant. There was no suggestion that the judge had failed to take into account or properly consider

the evidence that was in front of him and that the findings made were therefore sound.

47. Mr O’Ryan by way of reply submitted that the appellant’s point made that she was feeling pressured but no finding was made as to what the pressure was or how it manifested itself. There were not adequate reasons to show that it was insufficient to amount to a significant obstacle of reintegration.
48. At the conclusion of the submissions I reserved my decision which I now give.

Decision on error of law:

49. Before considering the grounds advanced on behalf of the appellant, it is necessary to consider two preliminary issues.
50. The first issue relates to the grant of permission. The grounds that were originally drafted did not set out or identify any arguable error of law in the decision of the FtTJ and from paragraphs [8 – 20] properly considered were no more than a disagreement with the decision of the FtTJ and as such does not constitute an error of law. That was the conclusion reached by the FtTJ who refused permission.
51. Upon renewal on the same grounds, the Upper Tribunal stated in its decision when granting permission that the grounds had been considered by giving them their “widest possible reading” on the basis that the appellant was unrepresented. Thus permission was granted on the grounds set out in the grant of permission.
52. The respondent in the written submissions dated 19 August 2020 submitted that permission to appeal had be granted for a reason not advanced by the appellant and the grounds nor based on a submission advanced before the FtTJ at the substantive hearing. Reference is made to decisions of the Upper Tribunal in *AZ (error of law: jurisdiction; PTA practice) Iran* [2018] UKUT 00245 and *Durueke (PTA: AZ applied, proper approach)* [2019] UKUT 000 197 and in particular paragraph 52 of *Durueke* that if permission is granted on a ground that has not been raised by the parties, it is good practice and a useful aid in the exercise of self-restraint for the permission judge to indicate which aspect of the headnote 3” of *AZ* applies.
53. Notwithstanding those submissions of the respondent, it seems to me that the point made by Mr O’Ryan is correct and that whilst criticisms have been made by the respondent concerning the grant of permission, the position as it stands before me is that a grant of permission has been made and therefore there are no jurisdictional issues which arise that would result in this tribunal refusing to deal with the case on its merits.

54. The second issue relates to the admission of evidence that was not before the FtTJ. That evidence comprises of a witness statement in support of the appellant and a copy of the notes held by the respondent relating to her application for entry clearance and as a student. They were sent in a letter dated 23 October 2020 stating “further to the appellant’s previous evidence dated 9 November 2019 we have obtained a further witness statement from the appellant to clarify the history of her account. The statement has been prepared following the disclosure of the appellant’s file by the respondent in response to a subject access request. Accordingly, pursuant to 15 (2A) of the Upper Tribunal’s 2008, we therefore respectfully request permission to rely on the witness statement and extract the Home Office file attached herewith.”

55. The admission of the further material is set out under Rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 as follows:

Evidence and submissions

15. ...

... (2A) In an asylum case or an immigration case –

(a) if a party wishes the Upper Tribunal to consider evidence that was not before the First-tier Tribunal, that party must send or deliver a notice to the Upper Tribunal and any other party –

(i) indicating the nature of the evidence; and

(ii) explaining why it was not submitted to the First-tier Tribunal; and

(b) when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal must have regard to whether there has been unreasonable delay in producing that evidence.

56. UT rule 15(2A) imposes important procedural requirements where the Upper Tribunal is asked to consider evidence that was not before the First-tier Tribunal. UT rule 15(2A) must be complied with in every case where permission to appeal is granted and a party wishes the Upper Tribunal to consider such evidence. Notice under rule 15(2A) (a), indicating the nature of the evidence and explaining why it was not submitted to the First-tier Tribunal, must be filed with the Upper Tribunal and served on the other party within the time stated in any specific directions given by the Upper Tribunal; or, if no such direction has been given, as soon as practicable after permission to appeal has been granted.

57. The letter enclosing the evidence was not filed until 23 October 2020, a significant time after the grant of permission on 10 June 2020. No reference been

made to the delay in making the application. Furthermore, it was wholly unclear from the letter which accompanied the fresh evidence, why a further witness statement prepared to clarify the history of her account was relevant to the issues that the tribunal had to consider.

58. I note that in the written submissions provided on behalf of the appellant that there was reference to the fresh material under the heading “remaking” and that “such a statement is relevant to the remaking of the appeal and/or to demonstrate the materiality of the above-mentioned errors”.
59. I sought the assistance of Mr O’Ryan who helpfully indicated to me that the immigration history was not clear as regards the refusal of entry clearance and the subject access request from the Home Office file provided the answer to this. As to the witness statement, he stated that it was not necessary to consider this to establish a material error of law but if it were admitted it would assist with materiality as to the wider issues of the family. However he made it plain that it was not necessary to rely on this when establishing an error of law.
60. Mr Avery on behalf of the respondent submitted that for his part he could not see that the fresh evidence had any relevance to the issue of error of law. He submitted that the appellant had been given an opportunity to provide evidence before the FtTJ and at a time when she was represented and a bundle of evidence had been provided on her behalf including a witness statement.
61. Having had the opportunity to hear the submissions of the parties, in my judgement the subject access request information does not change the position before the FtTJ as there was no dispute as to whether she had been granted entry clearance as a spouse or not. The written covering letter made by previous representatives dealt with that issue and it was not relevant to the judge’s assessment of the facts. As to the witness statement, the appellant had the opportunity to provide a full witness statement via her representatives and in fact did do so. That statement was set out in the bundle at pages 1 – 6 dated 5/11 2019 and signed by her. The appellant had the opportunity to provide all evidence relied upon before the FtTJ and no reasons have been given as to why that evidence was not provided. Whilst the written submissions at [28] state that the appellant has sought to clarify some drafting errors in her earlier evidence, the errors have not been identified and in reality the statement is simply further details of her claim. That being the case, this was not material that was placed before the FtTJ when it could have been set out in her earlier statement. Therefore I do not take that into account when reaching my assessment on whether the decision of the FtTJ involved the making of an error on a point of law. However, I would accept the submission that such material, in the event of an error being found, may be relevant in any remaking of the appeal.
62. I now turn to the grounds. Permission was granted on the basis that it was arguable that the tribunal had failed to take all material evidence into account

when reaching its conclusions at [23] that forced marriage would not constitute a “very significant obstacle to integration” because the appellant could avail herself of the general protection of the Pakistani state and that the judge had “failed to consider whether such protection in her case would be forthcoming.”

63. The grant of permission does not make any reference to what material evidence the judge overlooked or failed to take into account. However Mr O’Ryan in his written and oral submissions identifies that material as follows; the contents of the CPIN which the judge had not referred to and thus was selective in his citation of that material and also that the CPIN directed attention to the relevant CG decision (see paragraph 24 of the written submissions and the oral submissions made).
64. He therefore submits that the judge erred in law by failing to have regard to the paragraphs in the CPIN which he has identified in his submissions which he submits were strong enough to point to a conclusion opposite to the one reached by the judge. Thus he submits the passages point to a significant risk of harm to single/divorced women by way of a forced marriage and that there is no effective protection for such a risk.
65. He further submits that the part of the CPIN that the judge did cite at paragraph 3.1.2 was in general terms are not repeated elsewhere and thus the FtTJ erred in law by seeking to rely on this sole passage in reaching his decision.
66. I have given careful consideration to the written and the oral submissions which have been made on behalf of the appellant. They have been helpfully set out in the written submissions submitted by Mr O’Ryan and explained in his oral argument.
67. Having heard those submissions and having given careful consideration to them and in the light of the decision of the FtTJ, I am satisfied that the decision of the FtTJ was one that was reasonably open to him to make on the evidence that was placed before him and on the particular factual circumstances of this appellant’s case.
68. I will set out my reasons for reaching this conclusion.
69. As the FtTJ stated and Mr O’Ryan concedes, this was not a protection claim. The appellant had been informed by the respondent that if she sought to claim a risk on return of serious harm or persecution she should make such a claim which would then entail her claim being considered within the usual evidential safeguards and the collation of evidence before reaching a decision. She chose not to do so but relied upon a claim made on human rights grounds under article 8 based on her private and family life.
70. The FtTJ observed at [21] the confusion and lack of clarity in the nature of the appeal made by the appellant and her legal representatives noting that the basis of the claim in the application form was for an extension of stay in the UK

outside of the rules because of “compassionate and compelling circumstances”. The covering letter also stated that she did not meet the requirements of paragraph 276 ADE (which included the issue of very significant obstacles to integration). The judge however noted that the grounds of appeal lodged did make reference to the issue of significant obstacles and therefore in fairness to the appellant, the judge stated that he would consider that issue as part of her claim and appeal before the Tribunal.

71. There is no dispute between the parties as to the relevant law that was applicable when considering the issue of whether there are “very significant obstacles”.
72. In the decision of SSHD v Kamara [2016] EWCA Civ 813, Lord Justice Sales in considering a foreign criminal's "integration" into the country where he is to be deported, stated at [14] that the idea "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.
73. In AS v Secretary of State the Home Department [2017] EWCA Civ 1284 at paragraphs 58 and 59 where, giving the lead judgment, Lord Justice Moylan held:
 58. I do not consider that Mr Buley's categorisation of some factors as "generic" is helpful. Consideration of the issues of obstacles to integration requires consideration of all relevant factors some of which might be described as generic. What Mr Buley identified as "generic" factors, as referred to above, can clearly be relevant to the issue of whether there are very significant obstacles to integration. They can form part of the "broad evaluative judgment" as is specifically demonstrated by the reference in Kamara to "good health" and "capable of working".
 59. I also reject Mr Buley's submission that, following Kamara, whether someone is "enough of an insider" is to be determined by reference to their ties or links to the country. This is to turn what Sales LJ said in Kamara into just the sort of gloss which he expressly warned against. It is clear, to repeat, that generic factors can be of significance and can clearly support the conclusion that the person will not encounter very significant obstacles to integration.
74. In Treebhawon [2017] UKUT 00013 (IAC) the Tribunal found that mere hardship, mere difficulty, mere hurdles, mere upheaval, and mere inconvenience, even where multiplied, are unlikely to satisfy the test of very significant obstacles.

75. That decision was the subject of further discussion in the decision of Parveen v SSHD [2018] EWCA Civ as follows:

"Since the grant of permission this Court has had occasion to consider the meaning of the phrase "very significant obstacles to integration", not in fact in paragraph 276ADE (1) (vi) but as it appears in paragraph 399A of the Immigration Rules and in section 117C (4) of the Nationality Immigration and Asylum Act 2002, which relate to the deportation of foreign criminals. In *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813, [2016] 4 WLR 152, Sales LJ said, at para. 14 of his judgment:

"In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported ... is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

9. That passage focuses more on the concept of integration than on what is meant by "very significant obstacles". The latter point was recently addressed by the Upper Tribunal (McCloskey J and UTJ Francis) in *Treebhawon v Secretary of State for the Home Department* [2017] UKUT 13 (IAC). At para. 37 of its judgment the UT said:

"The other limb of the test, 'very significant obstacles', erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context."

I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

76. What is in issue is whether the FtTJ in his assessment of whether there were "very significant obstacles to the appellants integration" to Pakistan took into account all relevant material.

77. As set out above the submissions advanced on behalf of the appellant assert that the judge erred in law by being selective in the consideration of evidence contained in the CPIN and identified that by referring to the only passage cited at 3.1.2 and thus erred in law by failing to have regard to other passages which pointed to a significant risk of harm to single/divorced women subject to a forced marriage and finding there was effective protection. It is further submitted that this was a “sweeping generalisation”.
78. When considering the submissions, it is important in my judgement to consider the evidence that was before the FtTJ and the assessment of that evidence. As Mr Avery submitted, the material was placed before the judge was sparse in its contents; there was no reference to any country material and in the witness statement concerning factual circumstances there was little reference to risk beyond generalised statements.
79. The CPIN that the FtTJ made reference to sets out the position of women in Pakistan as follows.

2.3.1 Pakistan is ranked as the third most dangerous place in the world for women, and one of the most unequal. Violence against women is widespread, be it domestic violence, sexual abuse and harassment, acid attacks, forced marriages, forced conversion and honour killings.

80. Treatment by the state

2.3.2 The law in Pakistan prohibits discrimination on the basis of sex but in practice the authorities did not enforce it: women face legal and economic discrimination. Women faced discrimination in family law, property law, and the judicial system. Discriminatory provisions against women also exist in a number of laws, such as the Qanoon-e-Shahadat Order 1984 (Law of Evidence), the Hudood Ordinances (1979) and the Citizenship Act (1951).

2.3.3 There have been a number of legislative measures undertaken to improve the situation of women in Pakistan in recent years. However, the Prevention of Anti-Women Practices [Criminal Law Amendment] Act, 2011 is considered to be too ambiguous and police cannot arrest for the offence without a warrant or court order. Additionally, a study found that there was a lack of awareness and clarity about its application amongst police officers and public prosecutors. The police are sometimes complicit in violence against women. (See [Legal context](#) and [Police attitudes and responses to violence against women](#)).

2.3.4 In the country guidance case SM (lone women - ostracism) (CG) [2016] UKUT 67 (IAC), 2 February 2016, the Upper Tribunal held that: Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who

does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area, to be at risk of ostracism, still less of persecution or serious harm (paragraph 73 viii).

2.3.5 Pakistan remains a heavily patriarchal society and discrimination against women persists. Levels of violence against women (VAW) continue to be high; over 10,000 cases were reported in 2014. Statistics varied on the number of cases of VAW – under-reporting was cited as one reason and those who did file reports were often disbelieved or reprimanded for being part, if not entirely responsible. An average of 4 women were raped each day in 2014; 1,000 "honour" killings were said to be committed each year; up to 232 incidents of acid throwing occurred in 2014; 9 out of 10 women experience domestic violence. Other forms of VAW include dowry disputes, kidnappings, child marriage, acid and burn attacks, and forced marriages.

2.3.6 Being female does not on its own establish a need for international protection. The level of discrimination against women in Pakistan does not, in general, amount to persecution. The onus is on the person to demonstrate that she would be personally at risk of gender-based violence and that she would be unable to access effective state protection.

Forced marriages.

7.3.1 According to Dr Shakira Hussein, a fellow at the Australian National University, arranged marriages with a partner from their own ethnic community was the traditional norm across Pakistan, regardless of social standing. Dr Hussein noted that 'love marriages which transgress family expectations can result in considerable family pressure being brought to bear. Again, violence could be a part of such pressure.' [26] Some families were reportedly moved to use violence in opposing love marriages, including kidnapping their daughters, attacking the relatives of the males in a relationship, and obtaining help from the police to track down partners who married without family approval. [27] Women were legally free to marry without family consent, but those who did so were often ostracised or faced becoming the victims of "honour" crimes. [28]

81. Paragraph 2.3.6 of the CPIN cited above makes it plain that the onus is on the person to demonstrate that she would personally be at risk of gender-based violence and that she would be unable to access state protection."
82. As regards the issue of protection the CPIN cites the decision of *SM*.
83. The headnote in *SM (lone women - ostracism) Pakistan* [2016] UKUT 67 (IAC) reads as follows:

(1) Save as herein set out, the existing country guidance in SN and HM (Divorced women - risk on return) Pakistan CG [2004] UKIAT 00283 and in KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216 (IAC) remains valid.

(2) Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.

(3) It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.

(4) It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.

(5) Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.

(6) A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.

(7) Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman's children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see KA and Others (domestic violence risk on return) Pakistan CG [2010] UKUT 216 (IAC)). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.

(8) Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area, to be at risk of ostracism, still less of persecution or serious harm.

84. Again, reference is made in that decision to the onus being on the person to demonstrate why they would not be unable to access effective protection.

85. Whilst Mr O’Ryan submits that the judge erred in failing to have regard to the relevant considerations as to the assessment of risk on return as set out in *SM* (as cited) in my judgement that submission fails to take account of the factual assessment made by the FtTJ on the evidence that was before him which was relevant to any assessment in *SM*.
86. The decision makes it plain under headnote (2) that the guidance applies where “a risk of persecution or serious harm exists in the applicant’s home area” and therefore a risk of serious harm in the appellant’s home area is a necessary factual prerequisite.
87. The FtTJ addressed this issue in his assessment of whether there were very significant obstacles to integration at paragraph [23] where he stated as follows:
“ the appellant would be returning to Pakistan as a single divorced woman. The appellant has suggested that her life would be at risk in the event of return to Pakistan although she has not made any protection or asylum claim in that respect nor did she do so when she first entered the United Kingdom in 2012. In considering this aspect, I note that the appellant stated that her problems began following her divorce in 2009 but that she had continued to reside in Pakistan until entering the United Kingdom on a student Visa in 2012. Although the appellant states that she was pressured by members of her family to marry other people, I do not consider that the appellant’s concerns in this respect would be sufficient to amount to significant obstacles to integration to Pakistan in the event of return”.
88. In assessing the risk of serious harm and the claim made that her life would be at risk, the judge was entitled to take into account that she had made no protection or asylum claim. If such a claim had been made it would have been subject to the evidential requirements such as an interview and collation of evidence which would have been properly considered by the respondent. Furthermore and of more relevance in my judgement, the judge was entitled to place weight on a failure to make a claim of being at risk of harm when she entered the United Kingdom in 2012, having first stated that she was at risk of a forced marriage since 2009.
89. A further point made by the judge in his analysis of risk is that the appellant stated that her problems began following the divorce in 2009 but notwithstanding that claim she remained in Pakistan living alongside and with her family relatives until she entered the UK on a student visa in 2012. The inference from that factual finding is that despite a claim to be at risk of a forced marriage from family members she remained living in Pakistan for a significant period of time between 2009 – 2012 without risk of harm being demonstrated. There was no evidence before the judge that she had been forced into marriage during that period claimed and in my judgement those were all findings that were relevant to the risk of harm which is an essential prerequisite before considering issues of protection and relocation.

90. Contrary to the grounds, the judge did make a finding on the issue of risk based on the appellant's own evidence. The judge stated at paragraph [23] "although the appellant states that she was pressured by members of her family to marry other people, I do not consider that the appellant's concerns in this respect will be sufficient to amount to significant obstacles to her integration to Pakistan in the event of return."
91. There are two points to rise from that analysis. Firstly, the judge identified that the tenor of the appellant's evidence was that she claimed to have been pressurised by members of the family to marry. Secondly, the judge did not consider that the claimed pressure as she described it evidentially was a significant obstacle to her integration. A proper reading of the decision demonstrates the judge was not stating that forced marriage itself could not be a "significant obstacle to integration" or could not give rise to risk on return but that in the circumstances of the appellant and on the facts as he had found them, the appellant's evidence in her witness statement had been insufficient to demonstrate such a risk or in the terms of the judge was deciding "a very significant obstacle to integration".
92. As the FtTJ had earlier found, despite the claim made that she was at risk in 2009 when the divorce occurred, she remained in Pakistan for a significant period of time from 2009 - 2012 and this was contrary to her evidence that she had been forced time and time again into a second marriage. As recorded in the submission made on behalf of the respondent at [18] at no time had she even named or identified any individuals she was or would be forced to marry.
93. I accept the submission made by Mr Avery that the evidence advanced by the appellant was sparse in its contents and gave little detail of having suffered or being at risk of harm by way of a forced marriage. The evidence in the appellant's witness statement and that of the mother did not provide cogent evidence which would demonstrate that those findings or points identified by the judge were wrong in the light of the evidence and thus they were findings in my judgement which undermined the appellant's claim that she had demonstrated a risk of forced marriage.
94. Whilst the judge did not say so, the factual account of the appellant's mother leaving her daughter in 2009 to enter the United Kingdom and to remain there in the knowledge of the circumstances of the appellant undermined the appellant's own claim that she was at risk.
95. In my judgement the factual findings were sufficient to constitute a fact specific assessment about the nature and scope of risk as set out in the headnote of SM (as cited).
96. Whilst the judge did consider the issue of state protection thereafter citing 3.1.2 and that there was general effective protection, the headnote in SM also states, "the onus is on the person to demonstrate why they would be unable to access

effective protection.” No such evidence was provided in the evidence advanced before the judge for her appeal and there was no evidence as to the impact on the appellant. In this respect I accept the submission made by Mr Avery. The FtTJ had taken into account the claim to be at risk but have found that on the evidence that she had advanced it did not demonstrate such a risk and that there was a general sufficiency of protection which the appellant had not demonstrated that she was unable to access.

97. This was not a protection claim and the judge was required to consider the establishment of the facts on the balance of probabilities and not the lower standard applicable to a protection claim. There is no suggestion the judge failed to take account of evidence that the appellant had provided and on the limited evidence that the judge had before him, I am satisfied that the assessment of whether there were very significant obstacles which included a risk on return to Pakistan were properly considered by him in his decision. The FtTJ considered that the appellant was a single divorced woman but that does not equate to a single woman at risk of a forced marriage without more.
98. Even if it could be said the appellant would be ostracised, on the factual findings made by the judge, the appellant would not fall into a category of being a poorly educated rural woman but was someone who had education in Pakistan and also in the United Kingdom and would have the assistance from her family members in the UK.
99. For all of these reasons I consider that the grounds of appeal do not disclose any errors of law requiring the judge's decision to be set aside. The judge clearly had regard to all the evidence and was entitled to make the adverse findings that he did. Consequently, the FtTJ was entitled to conclude that the appellant had failed to show that there were “ very significant obstacles to her integration” and that that her removal to Pakistan would not breach her human rights under Article 8 of the ECHR. The FtTJ carried out a full assessment both under the immigration rules and outside the rules, identifying and applying the relevant public interest considerations and reaching a conclusion on the proportionality of the decision having weighed in the balance the family life established in the UK. That was a conclusion that was reasonably open to him to make.
100. For those reasons, I am satisfied that it has been demonstrated that the decision of the FtTJ did not involve the making of an error on a point of law and that the decision should stand.

Notice of Decision.

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtT shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*

Dated 19 April 2021