



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

Appeal Number: PA/03464/2020

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 25 March 2022**

Decision & Reasons Promulgated

On 07 July 2022

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MRS RABINA MAHARAJAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Puar, instructed by NLS Solicitors

For the Respondent: Ms Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

History of the appeal

1. The appeal came before me for re-making. I set aside the decision of First-tier Tribunal Judge O'Rourke allowing Mrs Maharajan's human right's appeal on the basis that there had been a material error of law for the reasons given in the decision dated 14 December 2021 appended to this decision. The decision dismissing Mrs Maharajan's asylum appeal was upheld.

2. The re-making is therefore in respect of the decision by the Secretary of State dated 30 January 2018 to refuse Mrs Maharajan's human right's claim.

Immigration history and background

3. Mrs Maharajan is a citizen of Nepal born on 20 June 1987. She entered the UK in March 2011 as a Tier 4 student. On 3 February 2013 she married a Pakistani national Mr Shah and converted from Buddhism to Islam.
4. Mr Shah initially entered the UK on 12 December 2010 as a Tier 4 student with leave valid until 10 May 2012 which was extended to 31 December 2013. He then applied for asylum on 29 April 2013. Mrs Maharajan was a dependent on his asylum claim. The application was refused with no right of appeal because Mr Shah had extant leave at the time. In December 2013 and 15 July 2014, he made further submissions which resulted in a decision refusing his asylum and human rights claim dated 11 February 2015. The appeal against that decision was dismissed by First-tier Tribunal Judge Boyes on 24 July 2015. Mrs Maharajan then made her own claim for asylum on 17 October 2018 which was refused in the decision under appeal. The appeal against that decision came before First-tier Tribunal Judge O'Rourke who dismissed the asylum appeal but allowed the human rights appeal. That part of the decision relating to Article 8 ECHR was set aside for re-making.
5. The couple have two children together who were born in the UK. Neither child is British, the eldest child, ("S1") was born on 12 June 2014 and is now 8 years old, the younger child ("S2") was born on 13 September 2017 and is now aged four. The family currently live together in accommodation provided by the Secretary of State for asylum seekers and failed asylum seekers.

The Issue in this appeal

6. It is agreed by both parties that this appeal involves consideration of Article 8 ECHR only. Although both Mrs Maharajan and her husband have claimed asylum individually and both have asserted that they would be unable to return to their respective countries because they would be subject to serious harm from their respective families as a result of entering to a marriage with a partner from a different nationality, caste and religion, their respective claims for asylum have been found to be unfounded by the First-tier Tribunal and there are no further outstanding challenges to these findings. Mrs Maharajan's representative confirmed that she is not pursuing an asylum or Article 3 ECHR protection claim.
7. It has also been found by previous Tribunals that there would be no very significant obstacles to the family returning to Pakistan as a unit and that neither Mrs Maharajan nor her husband can succeed under paragraph 276ADE(1)(vi) of the immigration rules. It is not asserted by her representative that the Mrs Maharajan can meet the requirements of

Appendix FM in respect of partners nor parents nor that she can succeed under 276ADE(1)(vi) of the immigration rules.

8. The only issue in this appeal therefore is whether it would be a disproportionate breach of Article 8 ECHR to remove Mrs Maharajan from the UK. By the date of the re-making the situation had changed because Mrs Maharajan's older child was aged over seven. The Secretary of State indicated at the error of law hearing that consent was given to this "new matter" being considered by the Tribunal at the re-making hearing and this was noted on the file in writing.

The law

9. The Secretary of State accepts that Article 8 ECHR is engaged in respect of family and private life.

10. It is asserted by the appellant that Mrs Maharajan can satisfy section 117B(6) of the Nationality Immigration and Asylum Act 2002 which states;

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and,

(b) it would not be reasonable to expect the child to leave the United Kingdom.

11. It is agreed that Mrs Maharajan's daughter S1 is a "qualifying child" because she has been living in the UK continuously since her birth for a period of 7 years. The younger child is not a qualifying child because at the date of the hearing he was only 4 years old. It is also accepted that as both children have grown up in a family unit with their parents and their mother has always been their primary carer and therefore that Mrs Maharajan has a genuine and subsisting parental relationship with a qualifying child.

12. It is accepted by Miss Rushforth for the Secretary of State that if Mrs Maharajan can demonstrate that she meets the provisions of section 117B(6) that the public interest does not require her removal from the UK.

13. The issues for me to determine are as follows;

A. Is it reasonable for S1 to leave the UK?

B. If it is reasonable for S1 to leave the UK would there be any other circumstances which would lead to unjustifiably harsh consequences for the Mrs Maharajan and her family, were they to be expected to relocate to Pakistan.

Documents in Evidence

14. Mrs Maharajan produced a new 134-page bundle of evidence containing a skeleton argument and documents which relate mainly to the children in response to directions. The Secretary of State did not object to this evidence being produced. Mrs Maharajan also relied on the original 175-page appellant's bundle. She also produced a short witness statement on the day of the hearing. The Secretary of State relied on the original bundle which included the decision letter, the previous decision of Judge Boyes and documents relevant to the claim for asylum.

The Hearing

15. Mrs Maharajan gave evidence in English. She adopted her new statement as evidence-in-chief and confirmed that the contents were true. She gave brief further oral evidence in which she confirmed that she was currently living in with her family in accommodation for asylum seekers. In her oral evidence she implied that she still believed that she and her partner would have problems in Pakistan, despite findings being made to the contrary.

Submissions

16. Miss Rushforth submitted that S1 is doing well at school. She is bright and quick at learning and would adapt. Despite her having friends in the UK, her primary focus at the age of 7 (as she was at the date of the hearing) is on her family. Her family will be relocating to Pakistan with her. The child's father has already confirmed that he has looked into returning to Pakistan and considered a voluntary departure package. The child has no outstanding medical conditions which require treatment. Her parents have both studied in the UK. They are educated and well placed to find employment. They both have experience of working abroad. Both children have been exposed to their father's culture in the UK and the children are both Muslim. It is in S1's best interests to remain with her family and it is reasonable to expect her to relocate to Pakistan.
17. Mr Puar emphasised that the test in respect of "reasonable" is very different to that of "very significant obstacles". The child is bright, however she is settled in school and has a strong network of children and adults in her world. The teachers talk about her progress. She is settled in Swansea. Her life opportunities would be different in Pakistan as a female because of the male dominated nature of society there. She would not have the same opportunities to develop her relationship and life opportunities. The appeal should succeed.

Previous findings by First-tier Tribunal Judge Boyes

18. Mr Shah's appeal against the decision to refuse his asylum claim was heard on 24 July 2015 by First-tier Tribunal Judge Boyes and the findings in that decision form the starting point for my findings in this decision. This is agreed by both parties.
19. These are as follows:

- a) Mr Shah is from Karachi in Pakistan. He is a Muslim. He speaks Punjabi and English. He studied economics at university in Pakistan but left the course when he travelled to the UK. He also worked as an investment consultant for several months whilst in Pakistan. He has two brothers and one sister who live with his parents in Karachi. His father has a cargo business, and his mother is a housewife. He comes from a middle-class Pakistani family.
- b) He last returned to Pakistan for a visit between September and November 2012.
- c) In the UK he studied at the London Academy of Management Services (“LAMS”). His father paid the course fees and his living expenses in the UK were met by his maternal uncle who is a British citizen and a businessman. He worked in his cousin’s off-licence until he no longer had permission to work.
- d) He lived with his uncle until 2013. His uncle asked him to leave because he disapproved of the marriage. He has received child benefit and tax credits in the UK. As an asylum seeker he has been dependent on the Home Office for providing support and assistance since 2015.
- e) Mrs Maharajan was born in Kathmandu in Nepal and lived there until she travelled to the UK in 2011. Her father is a driver, and her mother is a housewife. She worked as an accountant in Nepal for three years prior to moving to the UK. She has converted to Islam and is a practising Muslim.
- f) The couple met at college in the UK in June 2012 and married on 3 February 2013 in an Islamic ceremony in Mr Shah’s cousin’s house in Chigwell.
- g) Mr Shah’s family expected him to enter into an arranged marriage and disapproved of the relationship. He is now estranged from his family. Mr Shah had not been in contact with his family since 2012 because of this. By 2015 he had not made any sustained attempts through email, writing or intermediaries to explain to his family that his wife has converted to Islam and that they have a child.
- h) Mr Shah’s family have not threatened to harm or kill him, his wife and child although they may be unhappy and disappointed about the marriage. Nor would his wider family or the Syed caste in general wish to harm the Mr Shah his wife or child.
- i) There would not be very significant obstacles to the Mr Shah relocating to Pakistan.
- j) Mrs Maharajan assisted another individual a Mr Ram Krishma Thapa to obtain leave as her dependent spouse on 28 February 2011. Mrs Maharajan admitted that she was not married to this individual and

supplied a false marriage certificate to enable him to enter the UK. Her evidence was not straightforward and transparent and she is not a reliable witness.

- k) Mrs Maharajan is entitled to enter Pakistan as the wife of a Pakistani national and will be entitled to settle in Pakistan on that basis. She may experience difficulties because she is from Nepal and a Muslim convert but this can be mitigated somewhat by Mrs Maharajan and her husband settling in an urban area and forming a social network of people from their own generation who would be tolerant of their marriage.
- l) It is not reasonable to expect Mr Shah to relocate to Nepal because as a foreign national he would not be able to settle there.

Preserved findings from the decision of First-tier Tribunal Judge O'Rourke

20. The findings below are preserved from the error of law decision and are as follows:

- a) Mrs Maharajan is not at risk of serious harm in Nepal on account of her conversion to Islam and her family would not harm her or subject her to violence although they may exclude her.
- b) Mrs Maharajan's husband unsuccessfully applied for a voluntary return package.
- c) Mrs Maharajan has not told the truth when she states that she is unable to obtain a Nepalese passport. She is able to obtain a Nepalese passport which would allow her to travel to Pakistan and apply for status there.
- d) The family can return as a unit to Pakistan. There would not be any very significant obstacles to their re-integration.
- e) It is in the best interests of the children to live with their parents.

Additional Findings

- 21. I now make the following additional findings, having had sight of the further evidence, including the school reports in respect of the children, other evidence in Mrs Maharajan's bundle and her oral evidence.
- 22. There was no further evidence in respect of the asylum claim apart from a vague and unsubstantiated assertion that the family would have problems in Pakistan. This issue has in fact been settled already in the earlier Tribunal decisions and I disregard it.

My findings in relation to S1 and S2

23. The situation of the children is not the subject of any dispute. S1 was born in the UK. She has always lived with her mother and father. At the date of the appeal hearing, she was over 7 years old. She has attended Catholic primary school in Swansea since September 2018 and is currently in Year 3. She is a bright girl who is happy and well settled at school. She enjoys sport and physical education. She receives a lot of assistance from her parents with her schoolwork.
24. She currently lives in accommodation for asylum seekers with her parents and younger brother. Her parents do not work in the UK, they are entirely reliant for support on the British government and receive about £167 per week for the family.
25. S1 does not have any extended family in the UK with whom she has a relationship. She has not been to Pakistan or Nepal. Her first language is English. She understands a little Urdu but cannot speak, read and write Urdu. Her parents have not yet obtained a passport for her. She had an operation for a hernia which was successful. She has no other significant health problems.
26. S2 was also born in the UK and lives in the family unit. He attends the nursery of the same school. His parents have not applied for a passport for him. He speaks English and understands a little Urdu. He is just learning to read and write.
27. Both children are Muslim and the family have many friends in the UK, through school the cricket club and the Hay, Brecon & Talgarth Sanctuary for Refugees. Both children are also starting to learn Welsh. Neither child has left the UK since birth.

Is it reasonable for S1 to leave the UK? - Best interests assessment

28. When making this assessment, I must firstly take into consideration the welfare of any child affected by the decision under appeal in accordance with ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4, which is a primary but not determinative consideration. I consider the authorities and guidance on the welfare and wellbeing of the child in accordance with Section 55 of the Borders, Citizenship and Immigration Act 2009 and the numerous relevant factors set out in the various authorities. I also take into account the guidance in KO (Nigeria) & Ors v Secretary of State for the Home Department [2018] UKSC 53 in which it is clarified that the assessment of the child's best interests is to be made without reference to the parent's immigration status but that in general the best interests of a child is that they remain with their parents wherever their parents are expected to be.
29. I note in this respect that the starting point in the preserved findings is that it is in the best interests for this child to remain with her parents. Indeed in general, it is settled law that it is in the best interests of all children to grow up and have a meaningful relationship with both parents

and in normal circumstances the best interests of a child will lie in remaining with their parents and going to where they are going.

30. S1 was born in the UK and has grown up in the UK. She has never been abroad. She is familiar with the UK education and has now been in the Welsh education system since 2018 which has included a period when she was not able to attend school because of the pandemic. She speaks English as her first language although she also understands Urdu. She cannot read, write or speak Urdu. She is also learning Welsh. The family moved to Swansea from London in 2016/2017 when S1 was 2 years old. She was briefly at a previous nursery class at a different school from June 2018 before starting at her current school which is a Catholic primary school in September 2018 after her parents applied for her to go there. She has therefore been at the school for about 3 and a half years. She is not a crucial stage of her education being currently in Year 3 of primary school but will be starting primary school at the beginning of the next academic year.
31. From the school reports before me, S1 is described as being keen on sport including football and gymnastics. She works hard at school and applies herself. She is described as a model and conscientious student and a delightful young girl who has many friends. She is progressing well with reading and writing. She is very well settled and happy at school with strong relationships with her teachers and peers and is referred to as being emotionally, socially, educationally and spiritually successful. There are letters in support from parent of friends at school which speak of playdates. Her family has also been on daytrips and outings with the Hay Brecon and Talgarth Sanctuary for Refugees.
32. She has been exposed to the Urdu language which her parents speak. Family friends include some members of the Pakistani community and I find that she has had some limited exposure to Pakistani culture though them. However, she has also had a lot of exposure to non-Pakistani culture. Her mother is from Nepal, her school is Catholic and friends in Wales are from a wide range of backgrounds. Her father is a member of the Swansea cricket club and it seems that the whole family is involved with the cricket club. She has play dates with school friends.
33. There is no report from a social worker about her wishes and feelings, but from the evidence before me it is manifest that she is happy and secure in the UK, and I find that it is likely that her primary wish would be to remain with her parents and brother in the UK where she is at a good school, has friends and is part of the community and has a bright future.
34. In the UK, S1 has a secure family unit although her parents are on a low income and not able to work because of their immigration status. Her parents have skills and her father has previously worked in the UK. If he were permitted to stay in the UK, I find that he would obtain employment and that her mother who is more qualified as having previously worked as

an accountant would also obtain employment in order to financially support the family.

35. It would no doubt cause S1 considerable disruption to move to Pakistan. Her mother is not from Pakistan and has no family there and her father is estranged from his family so the family would have no immediate close or extended family support. Her parents have demonstrated that they have been able to survive in the UK, but they have received assistance the British state, which would not be available in Pakistan. Mr Shah was previously supported by his family in the UK but they no longer supported him after the marriage and this support will not be available in Pakistan. S1's father has now been living in the UK for 11 years and last visited Pakistan in 2012, ten years ago. He has been absent from Pakistan for a considerable period. He has made friends in the Pakistani diaspora in the UK but it is unclear to what extent they can assist him. I find that it would take some time for him to secure employment without assistance from his family although in due course he could obtain employment to support the family because of his middle-class background and previous work experience as well as his qualifications. From the CPIN on Pakistan and women I find that it would be harder for her mother as a non-Pakistani national and female to obtain employment. There would be a period where the family would be living in a precarious financial situation, even if S1's father could secure the voluntary return package to assist them which is not guaranteed and is limited in any event.
36. In Pakistan S1 would have to start her education over again and learn to speak, read and write Urdu. There was insufficient evidence before me that S1 would not be able to receive an education at all in Pakistan. State education until the age of 16 is compulsory and free. However, it would no doubt be very unsettling for her to have to start a new school, make new friends and speak a different language. The disruption would of course be mitigated somewhat by her family. Her parents are middle class and educated and her parents would no doubt act in her best interests and support her with her education as they do in the UK. Eventually she would be able to learn a new language and make new friends, because she is bright enough and capable enough to do this.
37. S1 will not get any support from her extended family in Pakistan. At the age of 8, she has started to form independent relationships outside of her family and she will have to form new friendships and relationships with peers and teachers in Pakistan. Although the evidence before me did not suggest that she would face persecutory treatment as a woman in Pakistan, there is evidence in the Secretary of State's country of origin report on Pakistan that there is general and widespread discrimination against women in Pakistan and inevitably she would not have the same freedoms and ability to express herself as a female as she would in the UK. She is not deeply assimilated into Pakistani culture, and I am satisfied that relocating to Pakistan would present as a considerable shock to her and be very unsettling.

38. Having considered all of these factors in the round including the level of social, cultural and educational integration that S1 has in the UK over the 8 years she has been here and the stability she currently has, I find that it is in S1's best interests to remain in the UK.
39. In respect of S2, I find that it is in his best interests to remain in the family unit wherever they are. He is younger. His primary focus is on his family, and he has not formed any independent life outside the family unit. He is not settled in the UK education system to the extent of his older sister and as a male would not experience the same problems in Pakistan. There was insufficient evidence before me to persuade me that the younger child would suffer any detriment in returning to Pakistan. He is familiar with Urdu. He is at the beginning of his education and will quickly be able to adapt and assimilate to the culture in Pakistan given his young age.

Reasonable to leave - wider assessment

40. When considering whether it is reasonable for S1 to leave the UK, I need to hypothesise that S1 would leave the United Kingdom, even if this is not likely to be the case, and ask whether it would be reasonable to expect the child to do so in accordance with JG (s117B(6) 'reasonable to leave'UK) Turkey [2019] UKUT 00072 (IAC) Rev 1 as endorsed in AB (Jamaica) [2019] EWCA Civ 661.
41. I make this assessment against the background in the context of where the parents are expected to be in accordance with Runa v SSHD [2020] EWCA Civ 514. In this appeal, neither parent is a British citizen or settled in the UK and both parents are expected to leave the UK. I merely set this out as the background. I give no weight to this factor or any other public interest factor when deciding whether it is reasonable for S1 to leave the UK. I focus solely on the child.
42. There is no presumption that it would be unreasonable for a child who has lived for more than 7 years in the UK to leave the UK or conversely that it would be reasonable for the child to leave. Each case must be considered on its own facts.
43. I have found that it is in S1's best interests to remain with her parents and brother in a loving family unit in the UK and although this is a primary but not determinative factor in the reasonableness assessment, and I must take all relevant factors into consideration.
44. I have found that S1 is very well settled in the UK and that it will be very disruptive for her to relocate to Pakistan where she will need to start her education again in a different language, educational system and culture. Despite not being at a crucial stage of her education in the UK she is entering primary school and is well integrated into the education system here. Even if she can ultimately learn to read, write and speak Urdu because she is bright and has the support of her parents, it will take time and set her back in her educational development which as a matter of

common sense would impact on her social and emotional development. She will also have to start again by forming new relationships with peers and teachers. She has been brought up as a Muslim so this should not present as a problem for her.

45. I give weight to the lack of wider family support in Pakistan, that her father's extended family disapprove of her parent's marriage, that her mother is a Nepalese national and a Muslim convert and I find that these factors are likely to make it more difficult for the family to integrate and make friends even in an urban area. I also take into account and give weight to the fact that there will be an initial period of financial difficulty whilst her father seeks employment with little or no support from family members, although I have found that he will ultimately be able to secure employment. I give weight to the fact that although S1 has some familiarity with Pakistani culture through her father and some family friends in the UK, that she is firmly integrated into Britain and British culture attending for instance a Catholic school where she has learned about Christianity. She has never lived in or visited Pakistan and has no ties with the country. She does not have contact with her extended Pakistani family in the UK. Her mother is Nepalese. I also give some weight to the fact that there is some discrimination against women in Pakistan and that her future opportunities would be more limited than those she would have in the UK. In this respect I give weight to the Secretary of State's own CPIN Pakistan: Women Fearing Gender Based Violence Version 4 at 4.1.2:

“The World Economic Forum's Global Gender Gap Index, where scores are based on economic participation and opportunity, educational attainment, health and survival, and political empowerment, ranked Pakistan the second worst country (and the lowest in South Asia) in 2018, in terms of gender equality”.

46. S1 has the benefit of having educated and middle-class parents and will not face the same difficulties faced by poorer and more rural women in Pakistan, nevertheless the overall opportunities for women are much more restricted than her opportunities would be in the UK and her parents have both expressed concerns about this. All of these factors will present difficulties for S1.
47. I also take into account that S1 cannot be blamed for her parent's actions.
48. This is a finely balanced decision. Nevertheless, having considered all of the relevant factors in the round, including S1's best interests and all of the factors set out above, I am satisfied that it is not reasonable to expect S1 to leave the UK and relocate to Pakistan with her parents and younger brother because of the extent of the disruption to her and the potential limitations on her life opportunities.

49. I am therefore satisfied that the Mrs Maharajan can meet the requirements of section 117B(6) of the 2002 Act and that this is determinative of the appeal. There is no need for me to turn to the remaining public interest considerations.

Notice of Decision

The appeal is allowed on human rights grounds pursuant to Article 8 ECHR.

Anonymity Direction

None was requested and it is not appropriate to make such a direction in this appeal.

Signed R J Owens

Date 29 June 2022

Upper Tribunal Judge Owens

Appendix 1 - ERROR OF LAW DECISION



IAC-AH-CO-V1

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

Appeal Number: PA/03464/2020 (V)

THE IMMIGRATION ACTS

**Heard at Civil Justice Centre Cardiff Decision & Reasons Promulgated
On 10 December 2021**

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Before

UPPER TRIBUNAL JUDGE OWENS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**RABINA MAHARJAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr Bates, Senior Home Office Presenting Officer

For the Respondent: Mr Joseph, Counsel, instructed by NLS Solicitors

DECISION AND REASONS

1. Ms Maharjan is a citizen of Nepal born on 20 June 1987. She appeals with permission against the decision of First-tier Tribunal Judge CH O'Rourke dismissing her appeal against a decision dated 29 May 2020 to refuse her human rights and protection claim. Permission to appeal to this Tribunal was granted on 1 July 2021 by First-tier Tribunal Judge Grant.

Appellant's Background

2. Ms Maharjan entered the United Kingdom in March 2011 as a Tier 4 student. She subsequently married a Pakistani national on 3 February 2013 and converted to Islam. Her husband claimed asylum on 29 April 2013, with Ms Maharjan as his dependent. That application was refused, and the appeal was dismissed on 24 July 2015. On 17 October 2018 Ms Maharjan claimed asylum in her own right and the refusal of this application is the decision under appeal.
3. Her claim is based on fear of her family as a result of converting to Islam and marrying a Pakistani Muslim. She also asserts that she cannot return with her husband as a family unit to Pakistan because she cannot obtain a Nepalese passport on which to travel. Her removal from the UK would be a breach of Article 8 ECHR. She has two children born in the UK.

First-tier Tribunal Decision

4. The judge took as the starting point the findings of the previous Tribunal in Ms Maharjan's husband's asylum appeal. Both she and her husband had been found to be unreliable witnesses. It was also found that they could return to Pakistan together as a family with their two children.
5. The judge did not accept Ms Maharjan's new assertion that she had not been able to obtain a Nepalese passport in order to enable to travel to Pakistan. The judge found that the family could relocate safely to Pakistan as a family unit with their two children aged 3 and 6.
6. Ms Maharjan conceded that she was not at risk of serious harm on account of her conversion to Islam in Nepal and that her family would not harm her. The respondent conceded that the family would not be able to relocate to Nepal as a unit because the children are not able to obtain Nepalese citizenship because Nepalese law prevents foreign men and those in inter-faith marriages living with Nepalese wives and because the children would not be granted Nepalese citizenship because their mother is married to a non-national.
7. The judge then stated under the heading "Notice of Decision":
"The appeal is refused on asylum grounds.
The appeal is refused on humanitarian protection grounds.
The appeal is allowed on human rights grounds."

Grounds of Appeal

Ground 1 - Material misdirection of law

The judge failed to apply Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka [2002] UKIAT 00702 when allowing the appeal on human rights grounds when the previous judge had found that the family could relocate to Pakistan.

Ground 2 - Inadequate reasons/ irrationality

Having found that Ms Maharjan was not telling the truth about her inability to obtain a Nepalese passport and having found that the family could return to Pakistan, the judge gave inadequate reasons for allowing the appeal under Article 8 ECHR.

Analysis and Discussion

8. At the outset of the appeal, Mr Bates for the Secretary of State informed me that having had a discussion with Mr Joseph for Ms Maharjan, both parties were in agreement that the judge's clear intention was to dismiss the human rights appeal. There has manifestly been an administrative error or slip. The judge's decision notice should have read "The appeal is dismissed on human rights grounds".
9. I am in agreement with this. It is manifest from reading the decision as a whole that the judge did not accept that Ms Maharjan could not obtain a Nepalese passport in order to travel to Pakistan with her husband and children. The judge found that Ms Maharjan's intention was to remain in the UK with her family.
10. The judge found the family situation to be analogous to the family in Zoumbous v SSHD [2013] UKSC 74. Both parents are educated, the family is close knit and the children's emotional needs can be met within the family unit. The judge's clear finding at [25] is that the family can return as a unit to Pakistan.
11. The judge manifestly found that there is no disproportionate breach of Article 8 ECHR in respect of return to Pakistan.
12. I am in agreement with Mr Bates that this error should have been dealt with by the First-tier Tribunal at permission stage. Had the First-tier Tribunal picked up the mistake, the correct procedure in accordance with MH(Iran v SSHD [2020] UKUT 125 is for the First-tier Tribunal to deal with this obvious error pursuant to rule 35 of the Tribunal Procedure (First-tier Tribunal)(Immigration and Asylum Chamber) Rules 2014 (as amended) in accordance with headnote (ii) which states as follows;

"A judge of the FtT who is minded to grant permission to appeal on the basis of a seemingly obvious error of law should consider whether, instead, to review the decision under appeal pursuant to rule 35".
13. The matter could have then been corrected at that stage by using the review procedure, thereby avoiding further litigation and court time.
14. However, this did not happen. First-tier Tribunal Judge Grant did not appreciate that the judge meant to dismiss the human rights appeal and dealt with the grounds as they were drafted, granting permission to appeal. The judge was not assisted by the fact that the Secretary of

State's grounds also did not identify the problem. Nevertheless, it is important that such errors are picked up at permission stage so they can be swiftly rectified.

15. As it is, the judge granted permission on the basis that the judge did not follow the guidance in Devaseelan and provided inadequate reasons for his findings.
16. The parties now agree that it was irrational for the judge to have allowed the human rights appeal in light of the judge's findings that the family could all relocate to Pakistan and that it was in the best interests of the children to do so. There was in fact no error in failing to follow Devaseelan. The judge correctly engaged with Devaseelan, took the findings of the previous judge as his starting point and followed the approach of the previous judge in body of the decision, his factual findings were also adequately reasoned. It is his action in allowing the appeal following those findings that is irrational.
17. Mr Joseph for Ms Maharjan agreed that this was the correct approach and acknowledged that the judge had clearly meant to dismiss the human rights appeal. There was no cross appeal on behalf of Ms Maharjan challenging any of the factual findings of the judge.
18. The Secretary of State pragmatically agreed that the decision had to be set aside on the basis of irrationality. Both parties were in agreement with this course of action.
19. It was agreed that the decision should be set aside with findings preserved and adjourned for re-making at the Upper Tribunal. I agree that is fair and interests of justice for the appeal to proceed in this manner given that the error was not picked up at permission stage.
20. The preserved findings are as follows:
 - a) Ms Maharjan is a Nepalese national married to a Pakistani national. They have two children together born in the UK. Ms Maharjan has converted to Islam. She will not be at risk of serious harm in Nepal on account of her conversion to Islam and is not at risk of violence from her family although they may exclude her. She does not have a well-founded fear of persecution and there is no real risk of serious harm to her on her return to Nepal.
 - b) Ms Maharjan's husband's asylum claim was refused. He is not at risk of serious harm in Pakistan. He unsuccessfully attempted to apply for a voluntary return package.
 - c) The family is not able to live together in Nepal because Nepalese law prevents foreign men and those in inter-faith marriages living with Nepalese wives and because the children would not be granted Nepalese citizenship.

- d) The family can return as a unit to Pakistan. There would not be any very significant obstacles to their re-integration. Ms Maharajan's has not told the truth when she asserts that she cannot obtain a Nepalese passport.
 - e) It is in the best interests of the children to live with their parents.
 - f) The parents are educated.
21. This is however not the end of the matter. The appellant's oldest child is now over seven and a different legal test now applies. In deciding whether it is proportionate to remove the family from the UK it is now incumbent on the Tribunal to take into account section 117B(6) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). It was agreed by both parties that this constitutes a 'new matter' pursuant to section 85(5) of the 2002 Act.
22. Mr Bates indicated that the Secretary of State consents to the appellant raising this new matter and would make a note to this effect on his file.

Notice of Decision

23. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
24. The decision of the First-tier Tribunal in respect of the Article 8 ECHR appeal is set aside with the findings above preserved.
25. The appeal is adjourned for re-making at the Upper Tribunal.

Directions

26. Having considered the present need to take precautions against the spread of Covid-19, and the overriding objective expressed at rule 2(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and also at rule 2(2) to (4), I have reached the provisional view that it would in this case be appropriate to hear the appeal by means of a remote hearing.
27. I therefore make the following directions:
- i. The scope of the remitted appeal is in relation to Article 8 ECHR only.
 - ii. Ms Maharajan is to file and serve on Secretary of State and the Tribunal a consolidated bundle of evidence and skeleton argument (electronically and in hard form) accompanied by any relevant notices no later than 5 days before the resumed hearing.

- iii. The Secretary of State is to file and serve, no later than 5 days before the resumed hearing, a position statement/skeleton argument.
- iv. Liberty for the parties to provide reasons as to why a face to face hearing is required in this matter no later than 7 days after this notice is sent out (the date of sending is on the covering letter or covering email).
- v. Additional documents and submissions must be sent by, or attached to, an email to FieldHouseCorrespondence@Justice.gov.uk 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.
- vi. Service on the Secretary of State may be to UTdirections@homeoffice.gov.uk and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

Signed R J Owens

Upper Tribunal Judge Owens Date 14 December 2021