IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004036

First-tier Tribunal No: HU/52447/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

1st March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

M U
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Jegede of SAJ Legal
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 5 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Chinweze signed on 11 August 2023 dismissing an appeal against a decision of the Respondent dated 24 May 2021 refusing a human rights claim.

2. The Appellant is a citizen of Pakistan born on 7 July 1992. He entered the UK on 8 May 2011 as a Tier 4 student with leave until 30 September 2013. He subsequently obtained a variation of leave in the same capacity to 12 October 2015. On 12 October 2015 the Appellant applied for an EEA registration card; this application was refused on 31 March 2016. On 20 November 2020 he made an application for leave to remain based on his private life.

3. It was overt on the face of the application form that the Appellant was only relying on private life – "*I am not applying as a family member – I am only applying on the basis of private life in the UK*". The application form acknowledged that the Appellant's parents and siblings living in Pakistan, but it was asserted that he was "*not on good terms with his family members in Pakistan*" and "*has lost all the contact with his family members in Pakistan*", and further claimed that "*it would be difficult or impossible to integrate and establish a private life outside the UK*".

4. Written representations set out in a covering letter to the application dated 15 January 2021 in addition to noting the fact that the Appellant had completed his studies of an undergraduate degree in marketing, made generalised, unparticularised, references to the Appellant having adopted the "*British ways of life*", and having made many friends. I pause to note that the completion of his studies in circumstances where he came to the UK as a student is wholly unremarkable, and does not explain his subsequent overstaying. Otherwise, nothing of any detail – far less any great significance – emerges from either the application form or the covering letter as to the nature and quality of the Appellant's private life, or the circumstances in which he had come to remain in the United Kingdom, or what he had been doing with himself, following his unsuccessful application determined in March 2016. Moreover, beyond the generalised reference to a loss of contact with family in Pakistan contained in the application form, nothing is offered to explain why the Appellant might not be in good favour with his family and has lost contact: the question of any obstacle to reintegration is not otherwise further addressed.

5. The only matter of any note is raised by way of a letter provided by Ms RB, an elderly woman to whom it is said the Appellant provided a degree of support and care. I have not been able to identify the specific letter, but it is commented upon in the Respondent's decision. I also note that further reference is made to RB in the Appellant's appeal witness statement dated 16 May 2023, and a supporting statement signed by RB on 16 May 2023 is included in the Appellant's appeal bundle before the First-tier Tribunal.

6. The application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 24 May 2021. In respect of the specific matter raised with regard to RB the RFRL comments:

> "*You have provided a supporting letter from a friend [RB] stating that you help with shopping, GP and hospital appointments and [she] has no other support. As a British Citizen [RB] will have access to their local authority social care through the GP should they require caring needs.*"

7. Bluntly, it is difficult to see that the application as presented had any merit either by reference to paragraph 276ADE(1) of the Immigration Rules or on a wider consideration of Article 8.

8. The Appellant appealed to the IAC.

9. In his appeal witness statement the Appellant stated for the first time in the proceedings that he was in a relationship with Dr VS. They had met in a nightclub in London in November 2021 – after the date of the Respondent's decision. A supporting statement and documents were provided by VS. VS is a national of India and is a Hindu. She has leave to remain in the UK - on a Tier 2 visa up until 10 March 2023, and subsequently with indefinite leave to remain. She is a medical doctor and works as a GP. Her statement confirms meeting in November 2021, and states "*we began formally dating*" on 31 December 2021.

10. The Appellant raised his relationship with VS not only as an aspect of his family/private life in the UK, but also as presenting a difficulty were he to return to Pakistan. He is a Muslim and as such is in a mixed-faith relationship.

11. In this context the Appellant's Skeleton Argument before the First-tier Tribunal, dated 30 May 2023, amongst other things argued that **Chikwamba** principles should be considered (**Chikwamba v SSHD [2008] UKHL 40**), and further highlighted the difficulties it was said the Appellant and VS might face either on a short-term or long-term basis if the Appellant were to return to Pakistan.

12. The Respondent gave consent to the Tribunal considering the 'new matter' of the Appellant's relationship with VS as an aspect of the Article 8 based human rights appeal, but did not give consent in so far as it might be suggested that any protection-based ground of appeal was engaged: see Respondent's Review at paragraphs 4 and 5.

13. The First-tier Tribunal proceeded with the appeal accordingly. Indeed, in circumstances where the Appellant had not previously raised any specific matters in respect of his private life beyond his support for RB, much of the focus was now on the Appellant's relationship with VS.

14. I note that the extent to which the Appellant offered support to RB appeared to have significantly diminished in light of his relationship with

VS. In his oral evidence the Appellant stated that he had relocated from London to Lancashire to live with VS in March 2022. It was his evidence at the hearing that he now sees RB once or twice a month (Decision at paragraph 19, and see further the Judge's analysis and observations at paragraph 44). Inevitably this significantly undermines the claims made in his witness statement of 16 May 2023 that RB was dependent on his care for shopping, cooking, cleaning and physical assistance. It also undermines the initial claim – also pursued in the witness statement (e.g. paragraph 13(b)) – to the effect that RB would be without adequate care and support in the absence of the Respondent. As such it is my own observation that the only matter of particularised substance in the Appellant's application of 20 November 2020 is wholly undermined: the Appellant was prepared to relocate away from RB when it suited him because of his relationship with VS; his claim that his close proximity to RB was vital as a reason for avoiding removal from the UK can be seen to have been essentially empty.

15. As part of his appeal the Appellant relied upon a clinical psychologist's report dated 25 May 2023. (I note that the index to the Appellant's bundle before the First-tier Tribunal wrongly describes this as a psychiatrist's report.)

16. The First-tier Tribunal dismissed the Appellant's appeal for reasons set out in the Decision and Reasons of Judge Chinweze.

17. The Appellant applied for permission to appeal, which was in the first instance refused on 8 September 2023 by First-tier Tribunal Judge Hollings-Tennant. A renewed application was granted on 27 November 2023 by Deputy Upper Tribunal Judge Skinner.

18. The Respondent has not filed a Rule 24 response. Nonetheless Mr Parvar confirmed that the Appellant's challenge to the decision of the First-tier Tribunal was resisted by the Respondent.

19. Mr Jegede provided a Skeleton Argument supplementary to the Grounds of Appeal: he indicated that this did not provide anything additional of substance to the grounds themselves, but cross-references to pagination had been updated to reflect the consolidated bundle before the Upper Tribunal.

Consideration of the 'error of law' challenge

20. The two grounds of challenge raised by the Appellant are summarised in the Grounds in these terms:

> "*Ground (i) – Having accepted at Para 32 that the Appellant "may have some symptoms associated with anxiety and depression" FTJ has only considered this finding when considering "very significant obstacles" but no comments are made as to whether the findings of anxiety and depression meet the exceptional circumstances threshold (lesser threshold).*"

> "*Ground (ii) - FTJ fails to adequately deal with the issue of the illegality of the Appellant's relationship with his partner in Pakistan considering their religious beliefs. This was the crux of the exceptional circumstance's consideration.*"

21. The grant of permission to appeal characterises the first of these grounds as "*arguable*". In respect of the second ground, it is commented "*This seems to me to be considerably weaker, but I do not restrict the grounds that may be argued*".

22. In my judgement the first of these grounds as amplified in the written grounds and by Mr Jegede before me contains an error in respect of its factual premise.

23. The Grounds repeatedly refer to the Judge having accepted that the Appellant was suffering from anxiety and depression – twice at paragraph 5 and once at paragraph 7. However, this was not the finding of the Judge. Whilst the Judge accepted that the Appellant "*may have symptoms associated with anxiety and depression*" (paragraph 32), he does not conclude that the Appellant has been diagnosed with depression: indeed the tone of decision is – in my judgement, sustainably - rather dismissive of the Appellant's claimed mental health problems.

24. I note the following:

(i) It was the Appellant's evidence that he had registered with a GP in London, but he could not remember where. After moving to Lancashire in March 2022 he had not registered with a GP.

(ii) The Appellant was not on any medication or other form of treatment.

(iii) The Judge gave due consideration to the contents of the report of the clinical psychologist: paragraph 27 *et seq.*. (I note that whilst the psychologist has the title 'Dr' this is pursuant to a PhD and not a medical qualification.)

(iv) The Judge was critical of the lack of information before the clinical psychologist when preparing her report: she had not had sight of the Respondent's refusal or the Respondent's Review (paragraph 30).

(v) The Judge also noted that the clinical psychologist trespassed beyond the bounds of her expertise in expressing an opinion as to the availability of mental health services in Pakistan, citing a report from October 2020 (paragraph 30).

(vi) The Judge noted that the clinical psychologist had not recommended any treatment or medication.

(vii) The Judge noted that there was no detailed exploration of the Appellant's supposed suicidal ideation in the report.

25. These matters lead to the following pertinent observations and findings of the Judge:

> "*31. … I also note the appellant has never been on medication for his mental health nor did he register with a GP after moving in with [VS] more than a year ago. This undermines the assertions of both the appellant and [VS] that they are concerned about his mental health.*
>
> *32. I accept the appellant may have symptoms associated with anxiety and depression, but I am not satisfied they are sufficiently severe to amount to very significant obstacles to the appellant's integration into Pakistan. I find the symptoms the appellant is experiencing are more likely to be the result of anxiety about his immigration status than the result of any underlying mental health illness.*"

26. In my judgement it is adequately clear that this is a finding that the Appellant displays symptoms of anxiety associated with his immigration predicament, and not as a consequence of any underlying medical diagnosis of anxiety or depression.

27. It is to be recalled that on the Appellant's own evidence he did not display any symptoms that had prevented him from being a carer of an elderly woman, or attending a nightclub, or forming a relationship with a new partner. The Judge's conclusions are essentially consistent with the Appellant's described circumstances.

28. It is acknowledged by the Appellant that the Judge took the evidence relating to mental health into account in the context of considering obstacles to integration under paragraph 276ADE(1). Complaint is made that there is no specific mention of "*the findings of anxiety and depression*" in the context of considering 'exceptional circumstances' as part of the Article 8 evaluation.

29. The difficulty for this submission is that, as explored above, there were no favourable findings in respect of anxiety and depression beyond an acknowledgement that the Appellant displayed symptoms of anxiety associated with concern over his immigration status. Manifestly there is nothing in this that could amount to 'exceptional circumstances' either in itself or in combination with any other factors pleaded in the case, or otherwise that could have tipped the proportionality balance in the Appellant's favour.

30. In my judgement the first Ground is misconceived by reason of a misconception as to the Judge's findings regarding the Appellant's mental health.

31. For completeness I note that there was a discussion at the hearing in relation to the extent to which there was a 'lesser threshold' under 'exceptional circumstances' than under 'very significant obstacles' (see Ground (i) as pleaded and set out above). In the event this issue is

immaterial given my conclusion with regard to the fundamental misconception in the first Ground.

32. However, upon reflection I make the following comments. It seems to me that it is unhelpful to think in terms of a higher or lower threshold: in reality the exceptional circumstances must relate to matters essentially not covered under the Rules; it is a different test rather than the same test with a different threshold. If 'circumstance X' that is pleaded as a very significant obstacle to integration under the Rules is found not to amount to a very significant obstacle, the same 'circumstance X' will not succeed under the exceptional circumstances test *qua* an obstacle to integration; there is no lower threshhold for essentially the same test. Such an approach would essentially undermine the wording and meaning of the Rules. This is not to deny that 'circumstance X' might not inform an evaluation of 'exceptional circumstances' on some other basis, and/or in combination with other factors – but it cannot be said that any obstacle to integration presented by 'circumstance X' amounts to an exceptional circumstance in itself.

33. Yet further for completeness, I note that Mr Jegede acknowledged in the course of submissions that the psychologist's report in addressing the impact on the Appellant of possible separation from VS did so on the basis of a permanent separation in the event of his removal from the UK, and did not have regard to any possible impact of a temporary separation pending what was likely to be a successful application for entry clearance made from abroad. Whilst this is not directly relevant to the challenge before me, and is not a matter expressly identified by the First-tier Tribunal – and as such I place no particular weight on it in my own consideration - it is to be observed that it underscores the problematic nature of aspects of the psychologist's report.

34. Be that as it may, for the reasons already given, irrespective of my observations in the preceding paragraph: I find that Ground (i) fails.

35. Nor do I find there to be any substance in Ground (ii).

36. It is manifestly the case that the Judge gave consideration to the Appellant's case in respect of the prohibition on Muslim-Hindu marriages in Pakistan. Indeed, he accepted the primary facts of the Appellant's case in this regard. See in particular paragraphs 35 and 36.

37. The Judge duly and properly identified that the relationship with VS was not an obstacle to the Appellant's own integration into Pakistan in the context of private (rather than family) life with reference to paragraph 276ADE(1)(vi) because it had been made by that VS had no intention of relocating to Pakistan: see paragraph 37.

38. In the context of a wider consideration of Article 8 family life, having found that Article 8 was engaged by reason of the relationship with VS, the Judge stated expressly that he had had balanced public interest considerations "*against those [factors] relied on by the appellant in*

support of his Article 8 rights" (paragraph 45). In my judgement it was not incumbent upon the Judge to set out all over again the matters to which he had already made reference as part of the Appellant's case – including insofar as those matters were more specifically particularised in the context of considering 'very significant obstacles'. I do not accept that the Judge lost sight of such factors. (Indeed I pause to observe that this would also have provided an alternative answer to Ground (i) had I been minded to the view that Ground (i) was not misconceived.

39. Further, pursuant to the Appellant's Skeleton Argument, the Judge addressed Article 8 with particular reference to **Chikwamba**, and in doing so had regard to the subsequent guidance in the case of **Younas [2020] UKUT 00129 (IAC)**. See paragraph 50 *et seq*..

40. When asked directly by the Judge VS stated that she was aware at the start of her relationship with the Appellant that he might have to return to Pakistan to regularise his immigration status, and in such context seemingly added that she was financially well off and considered herself compatible with the Appellant (paragraph 21). When asked if there were any barriers to the couple getting married in India she commented that it was not illegal to marry a Muslim albeit that her parents would not accept it (also paragraph 21). There is no suggestion that she required her parents' consent, or even that they would need to be informed. As such it appears to have been the clear evidence of VS that it would be possible to get married in India and for the Appellant to be supported and sponsored by her in an entry clearance application as a spouse in circumstances where she considered she had sufficient income. There is of course also the alternative of the Appellant applying from abroad as a fiancé. Indeed VS acknowledged that she had understood that some such scenario might be necessary to regularise the Appellant's immigration status.

41. It may also be noted that paragraph 7 of VS's witness statement whilst expressing a degree of discomfort about residing in Pakistan, appears to envisage the possibility of making a visit there – "*I always have the opportunity to visit him*" – but raises practical difficulties to do with work commitments, and the time and expense of "*travelling regularly to Pakistan not [being] sustainable long-term*".

42. In this context and generally the Judge at no point suggested that the Appellant and VS might seek to establish themselves as a couple in Pakistan. The consideration was on the premise that the Appellant would quit the UK in order to pursue an application for entry clearance. To that extent it would not be absolutely necessary for VS to visit Pakistan at all - even though, as I have just noted, VS acknowledged the possibility of making such a visit. The Judge referred to the possibility of maintaining the relationship in the interim through 'modern methods of communication' (paragraph 59). The fact that the Judge also made reference to the possibility of VS visiting the Appellant is not, I find, an indication that the Judge somehow lost sight of the prohibition of interfaith marriage in Pakistan: in my judgement as much is manifest from the Judge's

observation that the possibility of a visit was "*especially if he has his own accommodation*" – an indication that the Appellant and VS might need to exert a degree of discretion and act privately. More particularly, the possibility of a visit was entirely consistent with VS's own evidence.

43. In all such circumstances I do not accept that the Judge failed to address the substance of the Appellant's case, or otherwise failed to have due and proper regard so far as it was necessary to the country situation in Pakistan with regard to interfaith marriage. I can find nothing to fault the Judge's consideration of the **Chikwamba** point, or otherwise in respect of Article 8.

44. The reality is that ever since the Appellant's relationship with VS has become serious the course of action has been open to him of returning to Pakistan on his own - (or, perhaps, travelling to India in the company of VS), in order to make an application to return to the UK as a fiancé or partner (were they to marry in, say, India or some other country other than Pakistan) - in order to make an application for entry clearance duly supported by VS. It is manifest that as a couple they knew that this might be necessary. The Judge in substance found that there would be nothing disproportionate by way of interference in either the Appellant's private life or the couple's mutual family life were they required to do so – in accordance with the expectation of the usual processes of immigration control. I can find no fault with that conclusion. Indeed it seems to me that the Appellant is asking too much to expect some sort of flexibility or indulgence in respect of the usual requirements of immigration control in circumstances where he has not seemingly attempted to explain his overstaying, and where he only formed the relationship with VS at a time when he was in the UK pending an appeal against an essentially wholly unmeritorious application for leave to remain.

45. Both grounds of challenge fail.

Notice of Decision

46. The decision of the First-tier Tribunal contained no material error of law and accordingly stands.

47. The appeal remains dismissed.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

25 February 2024