



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-004331**  
**First-tier Tribunal No:**  
**HU/54254/2023**  
**LH/02122/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 04 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**MOBEEN AKHTAR**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Janjua of Januja and Associates.

For the Respondent:

**Heard at Phoenix House (Bradford) on 21 August 2024**

**DECISION AND REASONS**

1. The Appellant appeals with permission a decision of First-tier Tribunal Judge Saffer ('the Judge'), promulgated following hearing at Bradford on 31 July 2023, in which the Judge dismissed her appeal against the refusal of her application for leave to remain in the United Kingdom on the basis of her family and private life with Zahid Mahmood, her partner, who is a British citizen.
2. The application was refused on 17 March 2023 for the reasons set out by the Judge at [2] of the decision under challenge.
3. The Appellant is a female citizen of Pakistan born on 8 January 1975. Her application was made on 28 June 2022 and refused on 17 March 2023.
4. Having considered the documentary and oral evidence with the required degree of anxious scrutiny the Judge sets out his findings of fact from [25] of the decision under challenge.
5. The Judge accepts the Appellant arrived in the UK lawfully in October 2000 but that her visa expired in April 2021, and that she remained in the knowledge she had no lawful right to remain. The Judge accepts the Appellant lived with

another family until she had an Islamic marriage with Mr Mahmood in August 2020 [25].

6. The Judge did not accept the Appellant met the definition of a spouse in the Immigration Rules as she did not have a valid marriage certificate as it was only a religious marriage. Similarly, she did not meet the definition of a “partner” in the Rules as they only started living together at the date of the Islamic marriage certificate, 8 August 2020 [26].
7. The Judge did not accept the Appellant met the immigration rules on the “10-year route” as she had been here without leave to remain since the visa issued on 26 October 2000 expired [27].
8. The Appellant’s claim in her application that all her family members are in the UK, repeated in the statement signed on the day of the hearing that all her siblings had left Pakistan, was different from the oral evidence of the Appellant and Mr Mahmood who stated she had a brother and sister in Pakistan, who the Appellant stated she had spoken to only three days before the hearing [28].
9. The Appellant claimed in the application she speaks English fluently and was not claiming exemption from the English language test for any reason, which was said to be at odds with the statement and oral evidence that she would not be able to pass the test. The Judge finds if she speaks English fluently there is no reason she could not pass the test [29].
10. The Judge notes further discrepancy as to whether the Appellant had ever been to a GP as orally, she claimed she had not, but in a witness statement claimed ‘not regularly’ [30].
11. The Judge finds the discrepancies so significant that he was entitled to place no weight on the evidence as to how long she had been in the UK continuously [31].
12. The Judge finds little basis for placing weight on the evidence of the witness Raheesha as to whether the Appellant had been in the UK continuously since October 2000, as she was not born until 9 November 2001, and could not comment on whether the Appellant had been here for 20 years continuously [32].
13. The Judge places very little weight on the evidence of the witness Farah regarding the length of time the Appellant has been in the UK continuously, as she is unlikely to always be aware of the Appellant’s whereabouts, could not even be certain as to whether the Appellant had ever worked, or even been to a GP [33].
14. The Judge placed no weight on the written evidence of those who did not give oral evidence, despite many family members attending the hearing, as non-bar Raheesha and Farah had their evidence tested. None of the pictures provided are dated [34].
15. The Judge did not accept the Appellant had established her passport was lost by earlier representatives as there is no documentary evidence of any intervention by a regulatory authority against the firm, or of her reporting the loss to the police [35].
16. There was no medical evidence regarding Rukshana’s claimed mental health issues, in the absence of which it was not established she has any or that the Appellant was required essentially to be a surrogate carer at any time [36].
17. There was no evidence from the Pakistani authorities as to whether the Appellant had a passport issued to her between 2001 and July 2021 [37].
18. The Judge concludes that although he is prepared to accept the Appellant has been here continuously since she entered into an Islamic marriage with Mr Mahmood since August 2020, as he has no reason to doubt they were married then, and as there is evidence a passport was issued to her in July 2021 that has

- been used, the Appellant had failed to establish she has been in the UK continuously since 2000 [39].
19. The Judge does not accept the Appellant is a law-abiding citizen as she overstayed her visa and has shown a blatant disregard for immigration control [40].
  20. The Judge does not accept there are insurmountable obstacles or very serious hardship to family life continuing outside the UK, as a result of which there is nothing exceptional in her case [41].
  21. The Appellant has siblings in Pakistan as does Mr Mahmood with whom the Appellant can stay. There is no evidence they would not be willing to support her. It has not been established Mr Mahmood does not own a property in Pakistan or does not have income or assets there [42].
  22. The Appellant speaks Urdu and Punjabi and will be able to communicate and claims to be fluent in English [43].
  23. The Appellant has been in the UK for less than 20 years and could integrate into life in Pakistan where she lived until she was 25, has failed to establish she has not been back since, and is aware of the life, language and culture [44].
  24. The Appellant failed to produce any evidence of the entry clearance application process or failed to establish it would be prohibitively lengthy or that indirect contact could not be maintained in the meantime [45].
  25. The Judge did not accept Mr Mahmood did not speak Punjabi sufficiently to find work in Pakistan, as he used the Punjabi interpreter at the hearing, lived in Pakistan until 1998 and has visited since. He has family in Pakistan and is aware of the cultural and societal norms. The parties married in the knowledge the Appellant has precarious immigration status and it is for the Respondent to assess whether all the requirements for entry clearance are met [46].
  26. It has not been established it would be unreasonable or harsh, let alone unduly harsh, for the Appellant and the sponsor to go to Pakistan, or be separated temporarily, while she applies for the appropriate visa [47].
  27. The Appellant failed to establish removal will be a breach of private life or family life as they can remain together. The Judge notes the application was made on private life grounds only and it will be pursuing the legitimate aim of retaining the integrity of immigration control if the Appellant returns to Pakistan [49].
  28. Had proportionality being reached, the Judge would have found the decision proportionate [51].
  29. The Appellant sought permission to appeal claiming (1) the Judge's decision is against the weight of the evidence provided and that the Judges erred in law by not accurately applying the civil standard known as the balance of probabilities, (2) the Judge's decision is not in accordance with the Immigration Rules and Law, (3) the Judge failed to consider all the documentary evidence submitted with the application, and, (4) the Judge's determination is confused and full of contradictions; for the reasons set out in the application for permission to appeal.
  30. Permission to appeal was granted by another judge of the First-tier Tribunal on 3 October 2023, the operative part of the grant being in the following terms:
    2. One aspect of the appellant's appeal is her length of residence in the UK. The judge accepts that she entered the UK in October 2000 and remained in the UK after her visa expired in April 2001. At paragraph 27 of the decision the judge appears to accept that the appellant has remained in the UK since October 2000 but then goes on to find at paragraph 39 that he is not persuaded that she has remained in the UK continuously for 20 years. On careful consideration of the decision I am satisfied that on this issue the grounds disclose an arguable error of law. The grant of permission is not limited and other issues are raised.

## Discussion and analysis

31. A person challenging a decision of a judge of the First-tier Tribunal must have regard to the guidance provided by the Court of Appeal in Volpi v Volpi [2022] EWCA Civ 462 (see below).
32. Similar guidance has been repeated in the more recent decision of the Court of Appeal in Hafiz Aman Ullah v Secretary of State for the Home Department [2024] EWCA Civ 201 in which Lord Justice Green, in giving the lead judgement with which the other members of the Court agreed, wrote:

UT's jurisdiction and errors of law

26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:

(i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];

(ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 at paragraph [45];

(iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see UT (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 1095 at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see AA (Nigeria) v Secretary of State for the Home Department [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see MM (Lebanon) v Secretary of State for the Home Department [2017] UKSC 10 at paragraph [107].

33. Also of considerable relevance is the more recent decision of the Court of Appeal in Alexander Isaac Hamilton v Mark Colin Barrow (1), Claire Michelle Barrow (2) and Matin Welsh (3) [2024] EWCA Civ 888 in which Lady Justice Falk, who gave the lead judgment with which the other members of the Court agreed, wrote at [30]-[31]:

Approach to the appeal

30. Mr Hamilton rightly referred us to case law reiterating the approach of this court to appeals on questions of fact. Lewison LJ's summary in Volpi v Volpi [2022] EWCA Civ 464, [2022] 4 WLR 48 at [2] bears repeating:

"The approach of an appeal court to that kind of appeal is a well-trodden path. It is unnecessary to refer in detail to the many cases that have discussed it; but the following principles are well-settled:

(i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.

(ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

(iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.

(iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.

(v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.

(vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

31. The appeal court's reluctance to interfere applies not only to findings of primary fact but to their evaluation and the inferences to be drawn from them: *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5, [2014] FSR 29 at [114]. Absent an error of legal principle, this court will interfere with such findings only in limited circumstances: see for example *Walter Lilly & Co. Ltd v Clin.* [2021] EWCA Civ 136, [2021] 1 WLR 2753 at [85], where Carr LJ said:

"In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:

(i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support.

(ii) Where the finding is infected by some identifiable error, such as a material error of law.

(iii) Where the finding lies outside the bounds within which reasonable disagreement is possible."

34. Ground 1 asserts the Judge's determination is full of confusion and contradiction when at [25] the Judge was satisfied the Appellant entered the UK in year 2000 and has lived here since, whereas at [29] the Judge states he is not satisfied that the Appellant had lived in the UK since her arrival.

35. In relation to this point it is important to consider the wording of the actual test. To succeed on the private life ground the Appellant was relying on it was necessary for her to show she had lived in the UK for a continuous period of 20 years. (My emphasis)
36. At [25] and [27] the Judge makes findings in relation to this issue, in part. At [25] the Judge accepts the Appellant arrived in the UK in October 2000, that her visa expired in April 2021, and that she remained in the knowledge that the Visa had expired, which was not challenged. Similarly in this paragraph the Judge finds that the Appellant had lived with Rukhsana's family until she had an Islamic marriage with Mr Mahmood in August 2020. What the Judge does not find in either of these paragraphs is that the Appellant had been in the UK for a continuous period of 20 years.
37. It is also important to read the determination as a whole. The Judge's actual finding in relation to period of time in the UK is to be found at [31] where he writes "*these discrepancies are so significant, that I place no weight on her evidence as to how long she has been here continuously*". There is no ambiguity or confusion. The finding of the Judge is that the evidence did not enable the Appellant to discharge the burden upon her to the required standard to prove this point. That is a finding reasonable open to the Judge on the evidence.
38. Paragraph [4] of the Grounds also claims the Judge failed to give weight to witness evidence which confirmed that the Appellant had lived in the UK for more than 20 years.
39. So far as this paragraph seeks to reargue the appeal or disagrees with the findings made, it does not establish material legal error. The weight to be given to the evidence was a matter for the Judge. The Judge clearly considered the evidence with the required degree of anxious scrutiny and for the reasons set out in the determination attributed the weight he thought appropriate to the evidence from all the witnesses.
40. That assessment and attribution of weight has not been shown to be irrational, unreasonable, or outside the range of decisions and findings open to the Judge; who had the benefit of seeing and hearing oral evidence being given and who, in light of discrepancies that were noted, was entitled to place little or no weight on the documentary evidence and statements of people who did not turn up to have their evidence tested.
41. The claim the Judge applied an incorrect standard of proof is without merit. First-tier Tribunals are assumed to know and apply the correct legal principles, including the relevant burden and standard of proof. The fact the Appellant disagrees with the Judge's findings does not mean an incorrect burden or standard was applied. Reading the determination as a whole shows there is no merit in the claim the Judge applied the wrong burden or standard when assessing the merits of the evidence.
42. In relation to the issue of the Appellant's passport, at [5] of the Grounds, repeating what the Appellant claimed does not establish legal error. This ground does not challenge the Judge's actual findings made on this point. The Appellant claiming she could not make a complaint to solicitors or the police as she is alliterative and never worked or claimed benefits is irrelevant. She claims she has lived in the UK with family members for 20 years and if she had genuinely lost her passport it is reasonable to expect that she would have sought advice from those family members in relation to what to do.
43. Paragraph [6] asserts the Judge failed to take into account the fact the Appellant's husband is a British citizen who is in full-time employment in the UK, but the Judge clearly considered the evidence with the required degree of anxious scrutiny and was aware of what was being said in the witness statements in relation to the position of the individuals concerned in this appeal.

Even if the Appellant could not apply for entry clearance as a spouse, as they are not lawfully married in the UK, the Grounds fail to provide adequate reasons why she could not apply on another basis or pursuant to Article 8 ECHR if it is claimed there is a valid and subsisting relationship which can be supported by evidence. If it is being claimed the Appellant cannot satisfy the requirements of the Immigration Rules, and there is no other basis on which she will be able to re-enter the UK, that supports the Judge's finding the Respondent's decision is proportionate. Although it is claimed the Appellant's husband could not give up his full-time employment that does not prevent him returning with his wife to Pakistan during the period of any annual leave while they go through the necessary application process for her to be allowed to enter the UK lawfully, if there is any basis for doing so. Other points in the paragraph are attempts to reargue the Appellant's claim.

44. In relation to the claim at [7], there is no marriage, and at the date of application the Appellant did not have more than two years living together as husband-and-wife. The extent of their relationship was considered by the Judge at the date of hearing in relation to the human rights aspects. Again, that paragraph merely repeats matters the Judge took into account.
45. At [8] it is claimed it would be harsh and unreasonable to expect the Appellant's husband to go to Pakistan with the Appellant, but that is a matter for him. The evidence before the Judge did not establish it would or show there was anything, other than choice, which will prevent family life continuing in Pakistan. That finding is adequately reasoned and sustainable.
46. Having sat back and considered this matter I find the Appellant has failed to establish legal error material to the Judge's decision to dismiss the appeal.
47. The findings made are adequately reasoned and within the range of findings available to the Judge on the evidence. The decision has not been shown to be rationally objectionable.

### **Notice of Decision**

48. The First-tier Tribunal has not been shown to have materially erred in law.
49. The determination shall stand.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**21 August 2024**