UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER) APPEAL NUMBER: IA/48326/2014

THE IMMIGRATION ACTS

Heard at: Field House
On 21 March 2016

Decision and Reasons Promulgated
On 27 April 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR MUHAMMAD AHSAN TARIQ
NO ANONYMITY DIRECTION MADE

Respondent

Representation

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer
For the Respondent: Mr P Richardson, counsel, instructed by Nasim & Co Solicitors

DETERMINATION AND REASONS

1. I shall refer to the appellant as "the secretary of state" and to the respondent as "the claimant".

2. The secretary of state appeals with permission against the decision of the First-tier Tribunal Judge who, in a decision promulgated on 27 July 2015, allowed the claimant's appeal on human rights grounds.

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3. The claimant is a national of Pakistan, born on 6 February 1991. He appealed against the decision of the secretary of state dated 14 November 2014 refusing to vary his leave to remain in the UK on account of his family life [1].

4. There was no presenting officer at the hearing before the First-tier Tribunal Judge. At his appeal hearing the claimant claimed to be the main carer for his aunt. If he had to leave the UK it would have a serious and detrimental effect upon her physical and mental health. Medical evidence was produced in support.

5. Three letters were produced in respect of Ms Taslim T Akhtar (DOB 26.12.47) from Dr Qaiyum, dated 12 November 2013, 20 August 2014 and 18 May 2015 respectively. The doctor confirmed that she is registered with their practice. She suffers from hypertension, hyperlipidemia, peripheral vascular disease and anxiety. She had a myocardial infarction in about November 2010 and has difficulty walking. She cannot go out of the house alone to do shopping.

6. It is asserted that she has become incapable of looking after herself as a result of her poor health. She requires to be looked after; she has had the claimant with her for over two years. He has looked after her; he is "the sole carer". She is totally dependent on him for all household as well as outside work. She also relies on him for visits to the surgery. That is repeated in the letters dated 20 August 2014 and in the letter dated 18 May 2015, where it is stated that she has been fortunate to have her nephew, the claimant, living with her for almost five years now.

7. The claimant also asserted that his aunt has no family nearby to look after her and prefers the personal care he provides "... and does not believe that this can be obtained through Social Services." [4]

8. The claimant married his wife, Ms Munida Naeem, in the UK on 5 October 2012 and has been living with her for over two and a half years. Ms Naeem is a qualified pharmacist and works as a locum earning £14,000 gross per annum as well as running her own consultancy from which she earns a further £21,000 gross per annum. Her payslips as well as information from her accountant were produced in support. The claimant is not working and he and his wife live with his aunt [5].

9. In a letter dated 15 May 2015, the accountants for Elegant Eyes Corp (EEC) Ltd "confirmed" that the company has been trading "for the past year". The business started in 2013. Ms Naeem is the director and "will receive a salary of £21,000 per annum from this company."

10. There is a letter from the same accountants with regard to the company, dated 28 August 2014, stating that the company has been trading for the past year. The business started in August 2013 and the accounts have only become due after August 2014. It is

asserted that Ms Naeem is the director and will receive a salary of £21,000 per annum from this company.

11. The payslips from Elegant Eyes Corporation (EEC) Ltd, produced at pages 12-12E, cover the period January 2015 to May 2015. There are also payslips produced from pages 102-110 from Burns Chemist Ltd for the period November 2013-July 2014. As at 28 February 2014, the total gross pay to date was £12884.93. As at 31 July 2014, the total gross pay was £6148.68.

12. The claimant and Ms Naeem contended that it would be difficult if they were separated. Ms Naeem would find it difficult to work as a pharmacist in Pakistan. Her qualifications are not transferable. It would be difficult for a woman pharmacist to establish herself given that medical advice would have to be given to male and female patients [6].

13. Moreover, the timescale was uncertain. There was no way of knowing how long it would take for the claimant to apply out of country, and it could lead to their being separated for many months, if not more than a year. [7] Ms Naeem did not believe that mentally she would cope well with the separation. That would have an effect on her working life. She might have to reduce her hours as she would have to undertake to look after Ms Akhtar in his absence [7].

14. The claimant asserted that he had been here lawfully and has had his leave to remain legitimately extended. They are settled as a couple. The genuine nature of the relationship has not been disputed. It is also asserted that they have satisfied the financial requirements for settlement as a partner [8].

15. The claimant "makes his argument" under Article 8 of the Human Rights Convention, namely that the secretary of state's decision constitutes a disproportionate interference with his family life, his wife's and his aunt's [9].

16. The Judge noted the secretary of state's case. She made her decision pursuant to paragraph 276ADE and Appendix FM of the Immigration Rules. There were no insurmountable obstacles for them continuing family life in Pakistan. Nor were there exceptional circumstances present warranting consideration outside the rules [10].

17. The claimant's aunt did not attend the hearing and her witness statement was tendered. The Judge found that its contents were credible and consistent with her account given in the claimant's unsuccessful EEA appeal on 5 September 2014. On that occasion, the claimant's appeal under Appendix FM was remitted to the respondent for further consideration, culminating in a further refusal by her and the current appeal before the First-tier Tribunal Judge [16].

18. The Judge noted that there was no claim made by the claimant in respect of family life under paragraph 276ADE and Appendix FM of the rules. He noted that the secretary of state did not consider in her refusal decision the claimant's position under Article 8 of the Human Rights Convention. The claimant asked the Judge to consider his appeal under Article 8 of the EHCR. He asked the Court to consider his appeal under Article 8 of the Human Rights Convention "in respect to family life because he says that the facts of his case are such that they are exceptional or compassionate circumstances present" [17].

19. The secretary of state stated in the final paragraph of page 4 of the reasons for refusal that it has also been considered whether the particular circumstances set out in the application constitute exceptional circumstances which, consistent with the right to respect for private and family life contained in Article 8 of the ECHR, might warrant consideration by the secretary of state of a grant of leave to remain in the UK outside the requirements of the Immigration Rules. In the penultimate paragraph the secretary of state sets out the matters that have been considered in this respect, including the medical condition of the claimant's aunt. It was not accepted that there are exceptional circumstances "... which would mean removal is inappropriate in your case".

20. At [18] the Judge stated that in the light of the current jurisprudence, after applying the requirements of the Immigration Rules, only if there may be arguably good grounds for granting leave to remain to the claimant outside the Immigration Rules is it necessary for Article 8 purposes to go on to consider whether there are exceptional or compassionate circumstances not sufficiently recognised under them.

21. The Judge considered, from the facts present, that there are such exceptional or compassionate circumstances "which could arguably" lead to a grant of leave to remain: the claimant and Ms Naeem are in a genuine and subsisting relationship and they otherwise satisfy the requirements for settlement. He stated that he therefore does go on to consider the claimant's position under Article 8 of the Human Rights Convention outside of the Immigration Rules [18].

22. He assessed the claim as at the date of hearing following the 'principles in Razgar v SSHD (2004) UKHL 27. There was family life present here for the claimant and Ms Naeem. The issue was whether such interference is proportionate [19].

23. He found that the claimant and Ms Naeem have been in a genuine and subsisting relationship for over two and a half years. Ms Naeem earns about £35,000 per annum and she supports the claimant. It would be difficult for her to continue her work as a pharmacist in Pakistan and for her to have to go there would mean disrupting both her career and business. There was no way of knowing how long any settlement application from Pakistan might take [20].

24. They live in a property owned by the claimant's aunt. There is adequacy of accommodation. No adverse comments were raised by the secretary of state regarding their financial details [21].

25. He therefore found "in the round" that to expect the claimant to return to Pakistan to make a settlement application would be a disproportionate interference with his and his wife's family life. There was simply no good reason for that course of action. They are straightforward and decent young people in a genuine relationship. They are adequately accommodated and their financial situation is in excess of the financial threshold required of them. To expect them to suffer the anxiety and disruption of separation for an "undefined period" when "to all intents and purposes such a settlement application from Pakistan would succeed was not a proportionate way to deal with their family life [22].

26. The claimant has not claimed state benefits; he speaks English very well and has obtained qualifications here. There is no reason to believe that he would not find work and thereby earn money and continue not being a burden on taxpayers, and there is unlikely to be any issue with his integration [23].

27. He stated at [24] that as his appeal succeeds at this stage, it is not necessary for him to go on to consider his position under Article 8 in relation to his aunt [24].

<u>The grant of permission to appeal: Submissions</u>

28. On 27 January 2016, First-tier Tribunal Judge Andrew granted the secretary of state permission to appeal. There was an arguable error that in coming to his decision, the Judge did not consider whether it would be disproportionate for the claimant to return to Pakistan to apply for entry clearance and he did not consider whether family life could be continued abroad.

29. Mr Duffy relied on the grounds of appeal, including the contention that the Judge had not in substance had adequate regard to s.117 of the 2002 Act, as amended. He relied in that respect on the decisions in <u>Dube (ss. 117A-117D)</u> [2015] UKUT 90 as clarified in <u>AM (s.117B) Malawi</u> [2015] UKUT 0260.

30. It was accepted that the claimant could not meet the requirements under the Rules. He therefore requested his case to be determined under "free standing Article 8 assessment" on the basis of his family life.

31. The conclusion by the Judge that there were exceptional or compassionate circumstances because the claimant and his wife are in a genuine and subsisting relationship was not a sufficient reason to go outside the requirements of the Rules. Mr Duffy relied on the decision of the Court of Appeal in <u>Singh v SSHD</u> [2015] EWCA Civ 74 where the Court at [61] referred to the decision of Sales J in <u>R (Nagre) v SSHD</u> [2013] EWHC 720

(Admin). Sales J rejected the contention that the effect of the changes introduced by HC 194 was to exclude the possibility of claims which relied on article 8 "outside the Rules".

32. Whilst the secretary of state was not inhibited from considering such claims, Sales J stated at [29] of Nagre, that nonetheless, the new rules do provide better explicit coverage of the factors identified in case law as relevant to analysis of claims under Article 8 than was formerly the position, so in many cases the main points for consideration in relation to Article 8 would be addressed by the decision makers applying the new rules. It is only if, after doing that, there remains an arguable case that there may be good grounds for granting leave to remain outside the rules by reference to Article 8, that it will be necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under the new rules to require the grant of such leave.

33. Having considered a passage from Izuazu (Article 8 - new Rules) [2013] UKUT 45 IAC), Sales J added at [30] a slight modification for the purposes of clarity. If, after the process of applying the new rules and finding that the claim for leave to remain under them fails, the relevant official or Tribunal Judge considers it clear that the consideration under the rules has fully addressed any family life or private life issues arising under Article 8, it would be sufficient simply to say that; they would not have to go on in addition to consider the case separately from the rules. If there is no arguable case that there may be good grounds for granting leave to remain outside the rules by reference to Article 8, there would be no point in introducing full separate consideration of Article 8 again after having reached a decision on the application of the rules.

34. Mr Duffy submitted that this approach was upheld in both SS (Congo) and Others v SSHD [2015] EWCA Civ 387 and Agyarko v SSHD [2015] EWCA Civ 440.

35. He submitted that the reason given by the Judge did not constitute a proper basis for going outside the requirements of the rules. He relied on [50] and [51] of SS (Congo).

36. He further submitted that the Judge erred in concluding that it would be disproportionate for the claimant to seek entry clearance. No valid or adequate reasons for that finding had been given. He relied on [31] of Agyarko, *supra*. He referred to Chen R (on the application of) v SSHD (Appendix FM - Chikwamba - temporary separation - proportionality) IJR [2015] UKUT 189. The claimant had accordingly not shown that exceptional circumstances exist and had not provided a proper basis for finding that temporary separation would be disproportionate. Nor did the Judge properly consider whether family life can continue abroad.

37. Mr Duffy accordingly submitted that the decision should be set aside and re-made on the current papers by the Upper Tribunal. A decision should be made substituting that of the First-tier Tribunal and the claimant's appeal should be dismissed.

38. On behalf of the claimant, Mr Richardson relied on his Rule 24 response. He submitted that the secretary of state had not been granted permission on that ground. In any event with regard to the contention that the Judge did not adequately consider s.117 of the 2002 Act, he submitted that following Dube (ss 117A -D) [2015] UKUT 90 (IAC), it is not an error of law to fail to refer to the s.117 A-B considerations if the Judge has applied the test he was supposed to apply according to its terms; what matters is substance, not form. The Judge did apply the principles established by this section in substance as set out at [23].

39. He referred to the fact that the Judge found at [15] that the claimant and his wife were credible witnesses. He provided 'the gateway' to his conclusions. The secretary of state seeks to disagree with those findings. The Judge accepted that his aunt had no family nearby to look after her and that she would prefer the personal care of the appellant and did not believe that this could be obtained through Social Services. Mr Richardson submitted that there could be social services provision, but a relative's care is important and that was accepted by the Judge. This was based on the evidence of the GP letters that were produced (to which I have referred).

40. Mr Richardson accepted that even though the claimant had been here lawfully, the element of precariousness was nevertheless a relevant matter applicable in the s.117 considerations.

41. The finding by the Judge that it would be a disproportionate interference with the claimant's and his wife's family life to expect him to return to Pakistan to make a settlement application was consistent with Chikwamba [2008] UKHL 40.

42. In the alternative, he submitted that the hardship that would be caused to the claimant, his wife and aunt by a temporary separation fell within the category of cases envisaged in Agyarko, *supra* and Chen, *supra*, where the Chikwamba principle continues to prevail.

43. He referred to Agyarko at [24]. The "insurmountable obstacles" criterion is used by the Rules to define one of the preconditions set out in section EX.1 (b) which need to be satisfied before an applicant can claim to be entitled to be granted leave to remain under the Rules. In that context it is not simply a factor to be taken into account.

44. However, in the context of making a wider Article 8 assessment outside the Rules, it is a factor to be taken into account, not an absolute requirement which has to be satisfied in every single case across the wide range of cases covered by Article 8. At [30] Sales LJ stated that it is thus possible that a case might be found to be exceptional for the purposes of the relevant test under Article 8 in relation to precarious family life even where there are no insurmountable obstacles to continuing family life overseas. This does not mean that the issue whether there are or are not insurmountable obstacles to relocation drops out of the picture where there is reliance on Article 8. It is a material

factor to be taken into account. The gap between section EX.1 and the requirements of article 8 is likely to be small.

45. At [31] Lord Justice Sales stated that it is possible to envisage a Chikwamba type arising in which Article 8 might require that leave to remain be granted outside the rules, even though it could not be said that there were insurmountable obstacles to the applicant and their spouse or partner continuing their family life overseas. In a case involving precarious family life, it would be necessary to establish that there were exceptional circumstances to warrant such a conclusion.

46. Mr Richardson submitted that the findings by the Judge regarding income were sufficient and unchallenged. There was evidence before him. The sponsor was self employed and had income from employment. The Judge had to look at the situation before him which includes the evidence set out in the bundle. It is far fetched to suggest that this might not be the position in any future application from abroad.

47. Mr Richardson did not make any submissions regarding the disposal of this matter in the event that the decision were to be set aside. He did not argue against Mr Duffy's submission that the Tribunal should re-make the decision.

48. In reply, Mr Duffy submitted that the Judge did not provide a proper basis for finding that the claimant's application from Pakistan would succeed. The relevant evidential requirements under Appendix FM-SE had not been shown to have been met. It cannot be argued from the determination that the claimant would succeed in such an application from Pakistan.

Assessment

49. The Judge noted at [17] that there was no claim made by the claimant in respect of family life under the Rules (paragraph 276ADE and Appendix FM). The claimant based his argument before the First-tier Tribunal under Article 8, contending that the decision constituted a disproportionate interference with his family life, that of his wife and his aunt [9].

50. The Judge summarised the secretary of state's case at[10]. She did not 'believe' that any exceptional circumstances were present warranting consideration outside the rules. The Judge stated at [17] that the secretary of state did not consider the applicant's position under Article 8 and the claimant accordingly asked the Judge to consider the appeal under Article 8 on the basis that there were exceptional or compassionate circumstances present.

51. At page 4 of the secretary of state's reasons for refusal headed "Decision under Exceptional Circumstances", she referred to current guidance in respect of

"exceptional". That meant circumstances in which refusal would result in unjustifiably harsh consequences for the individual or their family such that refusal of the application would not be proportionate. She referred to and considered the medical condition of the claimant's aunt, Ms Akhtar. Her medical condition is set out in accordance with the GP's letters.

52. She acknowledged that the claimant provides care and assistance for his aunt. It is also noted that his aunt receives support and medical treatment from the NHS and other organisations as she is entitled to. She could gain further support, assistance and treatment from the NHS or other social services as she requires, to which she may be entitled. Moreover, his aunt has been suffering from her medical problems before September 2011 which is the date that the claimant entered the UK. The support that was being provided to her before he came here could continue or again be sought.

53. The Judge found at [18] after applying the requirements of the Immigration Rules, that there are exceptional or compassionate circumstances which could arguably lead to a grant of leave to remain outside the Rules. The basis upon which he went on to consider the claimant's position under Article 8 outside the rules was that the claimant and his wife are in a genuine and subsisting relationship and that they otherwise satisfy the requirements for settlement.

54. He accordingly assessed their claim under the Razgar principles. He found that they were in a genuine and subsisting relationship for over two and a half years. His wife earned about £35,000 per annum. It would be difficult for her to continue her work as a pharmacist in Pakistan and this would be disruptive for her career and business in the UK [20].

55. In finding that there would be a disproportionate interference with both his and his wife's family life and that there would be no good reason for such settlement application to be made from abroad, he did not include in the assessment the position of the claimant's aunt, but only the interference affecting the claimant's and his wife's family life.

56. He stated at [21] that after the previous appeal they submitted their financial details to the secretary of state for consideration; no adverse comment was raised by her. Moreover, he found that "to all intents and purposes" such a settlement application from Pakistan would succeed [22].

57. However, under the Rules the substantive conditions which have to be satisfied in relation to the minimum income requirements for a sponsor are stipulated in Appendix FM-SE, which sets out the forms of evidence required to substantiate claims that the substantive financial requirements under Appendix FM have been met: SS (Congo) at [50]. There has been no finding that as at the date of the hearing there has been compliance with these rigorous requirements. There was an assertion at paragraph 7 of

the skeleton argument before the judge that the Tribunal should 'see the attached documents for evidence in this regard'. There was no analysis undertaken or any finding made as to whether the requirements had been satisfied from the documentation produced.

58. As noted by the Court of Appeal in SS (Congo), Appendix FM-SE deals with matters such as the types of bank statement, payslips, income, savings and so forth which will be regarded as acceptable [50].

59. The Court of Appeal held that the approach to Article 8 in the light of the Rules in Appendix FM-SE should be the same as in respect of the substantive leave to enter and leave to remain rules in Appendix FM. In other words, the same general position applies, but compelling circumstances would have to apply to justify a grant of leave to remain where the evidence rules are not complied with.

60. The claimant's application was made at a time when precarious family life existed. Although that was not addressed by the First-tier Judge, the Court of Appeal in Agyarko, *supra*, has accepted at [30] that it is possible that a case might be found to be exceptional for the purpose of the relevant test under Article 8 in relation to precarious family life even where there are no insurmountable obstacles to continued family life overseas.

61. At [31] it was stated that it is possible to envisage a Chikwamba type case arising in which Article 8 might require that leave to remain be granted outside the rules, even though it could not be said that there were insurmountable obstacles to the applicant and their spouse or partner continuing their family life overseas. In a case involving precarious family life, it would be necessary to establish that there were exceptional circumstances to warrant such a conclusion.

62. That did not mean that the issue whether there are or are not insurmountable obstacles to relocation drops out of the picture where there is reliance on Article 8. It is a material factor to be taken into account.

63. The First-tier Tribunal found that there were such exceptional and compassionate circumstances that existed, namely the claimant and his wife were in a genuine and subsisting relationship.

64. The relevant facts were that the claimant entered the UK in 2001. He came as a student with entry clearance valid until 13 October 2012. He married his wife on 5 October 2012. They do not have any children in the UK. They entered into a relationship at a time when the claimant's immigration status in the UK was precarious.

65. There was no claim made by the claimant with regard to family life under paragraph 276ADE and Appendix FM of the rules. The claimant applied on 11 October 2012 for leave to remain on the basis of his family and private life. Further to the agreement to reconsider his application for further leave to remain, the secretary of state considered his application under Article 8 ECHR and the Rules in place on 9 July 2012.

66. In considering his application under the partner route the secretary of state accepted that he had a genuine and subsisting relationship with his British partner. Although she had been here all her life and is in employment here this did not mean that they are unable to live together in Pakistan. Even if this may cause a degree of hardship for his wife, there was no evidence showing that there were any insurmountable obstacles preventing him continuing the relationship in Pakistan. He had brothers and sisters who reside there and his British partner could live there with the support of his family.

67. In refusing his application under private life the secretary of state did not accept that there would be significant obstacles of integration into Pakistan.

68. In the light of that background, the finding by the Judge that there were exceptional or compassionate circumstances on the basis that the claimant and his wife are in a genuine and subsisting relationship, did not constitute a sufficient basis which warranted consideration outside the rules under Article 8.

69. There was no proper consideration given as to whether, in the circumstances, the claimant could make an application from abroad even though it might necessitate a short separation pending the outcome of his application for settlement in the UK. Nor was it considered whether his spouse could accompany him to Pakistan, even for a limited period, pending the outcome of his application. There were no insurmountable obstacles referred to which prevented the continuation of their relationship in Pakistan for a short period. The claimant has parents and sisters who reside in Pakistan and with whom his wife could live.

70. Moreover, the finding at [22] that there was no good reason for such an application to be made from abroad as it would succeed was by no means evident from the evidence presented. In particular, it is not apparent that the necessary documentary evidence was produced demonstrating that the specified documents required under Appendix FM-SE regarding the financial requirements had been satisfied. As stated in SS (Congo), *supra*, at [52] the evidence rules have the same general objective as the substantive rules, namely to limit the risk that someone is coming to the UK and then becomes a burden on public resources. The secretary of state has the same primary function in relation to them to assess the risk and put in place measures which are judged suitable to contain it within acceptable bounds.

71. As noted at [53], enforcement of the evidence rules ensures that everyone applying for leave to enter or leave to remain is treated equally and fairly in relation to the evidential requirements they must satisfy. The application of standard rules is an important means of minimising the risk of arbitrary differences in the treatment of cases arising across the wide range of officials, tribunals and courts which administer the system of immigration controls. Good reason would need to be shown why a particular applicant was entitled to more preferential treatment with respect to evidence than other applicants would expect to receive under the rules. If an applicant says that they should be given more preferential treatment with respect to evidence than the rules allow for, and more individualised consideration of their case, good reasons should be put forward to justify that.

72. In the circumstances, the Judge provided no proper basis or reasons justifying his finding that they "otherwise satisfy the requirements for settlement" [18]. There was no proper assessment as to whether the rigorous requirements under the Appendix had been met. The Judge merely referred to payslips and information from her accountant that were produced in support [5].

73. There were thus no compelling circumstances present justifying acceptance of the sponsor's income which did not satisfy the requirement in Appendix FM-SE.

74. Whilst the Judge did not consider the position of the aunt in the context of the proportionality of the contemplated interference, the secretary of state had considered her position in the assessment as to whether there were exceptional circumstances. As already noted, this included the care and assistance that the claimant had given her. She was also receiving support and medical treatment from the NHS and would be entitled to such treatment and further support and assistance including from Social Services which she might require and be entitled to. The fact that she prefers the personal care of her nephew and does not believe this can be obtained through Social Services did not mean that such proper care would not be available to her.

75. It is furthermore evident from the medical reports that she had been suffering from such problems prior to September 2011 when the claimant first entered the UK. Appropriate care had been made available to her and would continue to be made available if she were entitled to it.

76. Although, as noted, it is possible that there may be cases which could be exceptional for the purpose of the relevant test under Article 8 in relation to precarious life even if there were no insurmountable obstacles to continuing family life overseas, this does not mean that the issue as to whether there are or are not insurmountable obstacles to relocation, even for a short period, drops out of the picture where there is a reliance on Article 8 – Agyarko, *supra*, at [30]).

77. For the reasons already given, there were no such exceptional circumstances in this case.

78. I find that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law. I accordingly set aside the decision and re-make it. qI have set out the contentions as to whether there were sufficiently compelling reasons in this case for granting leave to remain in the UK on Article 8 grounds. However, for the reasons already given, I conclude that no such circumstances have been advanced. There was nothing disproportionate in the secretary of state's assessment that there would not be any insurmountable obstacles preventing the claimant and his wife from continuing their relationship in Pakistan.

79. Nor, for the reasons already given, would there be a disproportionate interference with the Article 8 rights of the claimant and his aunt.

80. As indicated, it is a matter of choice for the claimant and Ms Naeem whether or not she would accompany him for a short period to Pakistan whilst his application for settlement is being considered. If she chooses not to accompany him on account of any disruption to her career and business in the UK, the contemplated separation would still not constitute a disproportionate interference with their family life.

81. There is moreover nothing disproportionate in the secretary of state's requiring that the claim be made from abroad, in which the financial requirements under Appendix FM and Appendix FM-SE must be set out and satisfied. The evidence rules have not been properly shown to have been met either at the date of the application or at the date of the First-tier Tribunal Judge's decision.

82. In giving effect to the need to meet the public interest which is in issue, the requirement that the claimant make an entry clearance application from abroad does not constitute a disproportionate interference with his/their right to respect for family life.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and the decision is set aside. I substitute a fresh decision for that decision dismissing the claimant's appeal.

No anonymity direction is made.

Signed Date 24 April 2016

Deputy Upper Tribunal Judge Mailer