Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/06463/2019**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 10 December 2019	**On 20 December 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR MAHAD KHAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik of Counsel, instructed by Sabz Solicitors LLP
For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, has permission to challenge the decision of Judge Swinnerton of the First-tier Tribunal sent on 6 August 2019 dismissed the appeal of the appellant against the decision of the respondent on 23 March 2019 to refuse his human rights claim.

2. The appellant's grounds of appeal are unstructured but appear to contend that the judge erred in:

   (1) failing to properly weigh the relevant factors in the context of Section 117B of the NIAA 2002;

(2) failing to take account of the fact that the appellant had stayed in the United Kingdom for almost half his life at the time of application and the date of hearing;

(3) deciding on the basis of no evidence that the appellant would be able to find a job or relocate to Pakistan notwithstanding his lack of ties and the acceptance that his nuclear family members all resided in the United Kingdom; and

(4) failing to give adequate or any reasons why the evidence of the appellant's sister had been rejected.

3. I heard excellent submissions from both Mr Karnik and Mr Tan. In amplifying the grounds, Mr Karnik submitted that the judge's decision failed to show that he had understood the need for assessment of the appellant's ability to integrate in Pakistan in the light of the Court of Appeal guidance in **Kamara [2016] EWCA Civ 813** which had been endorsed in several decisions since, including very recently in **[2019] EWCA Civ 2098**. That failure was particularly important in the appellant's case because it was accepted that he had been brought to the United Kingdom at the age of 13. In this regard, Mr Karnik argued that at paragraph 23 the judge had put an impermissible gloss on the meaning of the term "very significant obstacles" by stating that the appellant's ability to form an adequate private life should be judged by the standards of Pakistan, not UK standards.

4. By reference to the Court of Appeal decision in **GM [2019] EWCA Civ 1630**, Mr Karnik argued that the judge's approach to the balancing exercise required when assessing the case outside the Rules was flawed. Mr Karnik took particular exception to the judge's statement in paragraph 26 that:

> "I took into account that the public interest in firm immigration control is not directed by the consideration of the person pursuing a claim under Article 8 has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely."

5. Mr Tan contended that the judge had properly applied the relevant test under the Rules and outside the Rules. The judge had focused on the issue of integration sufficiently. The reference to firm immigration control did not amount to unduly elevating the public interest factors in the proportionality assessment. The judge was entitled to conclude as he did in relation to the appellant's ability to find work. There was an adequacy of reasons. The judge gave detailed treatment of why there had not been shown to be any interdependency between the appellant and his sister.

6. I am not persuaded that the judge materially erred in law.

7. Insofar as the grounds challenge the judge's treatment of Section 117B considerations (the subject of ground (1)), a fair reading of the decision shows that the judge had regard to all the relevant considerations set out, including the appellant's fluency in English and his financial circumstances. Whilst the judge does not specifically refer

to Section 117B(5) when setting out the Section 117B considerations, he had earlier dealt with the issue of the immigration status of the appellant. It was clear that the judge was aware that the appellant had come to the country when he was 13 and that this was not by his own choice and therefore his immigration status up until the age when he became an adult (in 2012) was not in issue. In paragraph 17 the judge stated that he found the evidence about when in his adulthood the appellant claimed to have discovered his immigration status to be precarious was vague. At paragraph 21 the judge noted that he accepted that part of the time the appellant had overstayed was when he was a child under the care of his parents and the decision to overstay then was made not by him but by his parents. However the judge noted that the appellant was now aged 24. That amounted to a fair treatment of the s.117(5) issue.

8. Mr Karnik takes issue with the judge's treatment in the context of the Section 117B considerations to the judge's reference to a "firm" immigration control in paragraph 26. I do not consider that the judge's use of that adjective was intended to denote a higher threshold of public interest than is set out in the Act or in the Rules. For one thing, the judge was purely concerned in the relevant sentence with what weight he could attach to the appellant's ability to be self-sufficient or to be a burden on the state in relation to Section 117B (3). For another, the judge clarified in the final sentence of paragraph 26 that the significance of the Section 117B (2) and (3) considerations was that when they were not present, "the public interest is fortified". That is consistent with the established case law principles dealing with Sections 117B (2) and (3).

9. In relation to ground (2), the grounds contend that the judge erred by failing to take into account that the appellant had stayed in the United Kingdom for almost half his life at the time of application and the date of hearing. I find no discernible error in the judge's treatment of this issue. First of all, it was accepted by Mr Karnik that the appellant was not in a position to meet the relevant requirements of the Immigration Rules, even now that he had turned 25. Furthermore, it was clearly in the forefront of the judge's mind that the appellant had been in the UK since 2007 when he was aged 13. The judge clearly took account of the appellant's evidence about the extent of his integration into the United Kingdom, noting that he had obtained skills, qualifications and experience of life in the UK: see for example paragraph 7 and paragraph 21. The judge herd related submissions on this issue and was clearly entitled to make the findings on it that he did.

10. In relation to the appellant's challenge to the judge's treatment of whether or not he met the requirements of paragraph 276ADE of the Rules by being able to show that there would be very significant obstacles to his integration into Pakistan (the subject of ground (3)), I concur with Mr Tan that whilst the judge does not refer to **Kamara** or any related case law his approach to this issue was entirely consonant with the approach set out in that decision. That is perhaps clearest from paragraph 25 where the judge stated that he accepted that "there may be some obstacles to the appellant integrating into Pakistan, particularly when he first returned to the country but I do not find that these would amount to very significant obstacles to his integration.". This paragraph follows paragraph 24, wherein the judge stated:

> "24. I took into account his period of residence outside Pakistan and that he has been in the UK since the age of 13, spending his teenage years and early adult hood in this country. He had attended school in Pakistan, starting, he thinks, when he was eight. He attended for five years until he was 13. He has lived the majority of his life, albeit when he was a child in Pakistan and he will have obtained knowledge of the culture and traditions during this time. The evidence before me is that he is in good health and is resourceful. He has managed to support himself, albeit illegally, by looking for and then doing work including gardening, cleaning buses and some bodywork on vehicles. He has obtained qualifications in the UK and he could utilise his skills and experience to look for and find work to support himself in Pakistan. He speaks Urdu, one of the main languages in Pakistan as well as English and he would be able to communicate socially and also when looking for work and subsequently when he was doing it. I am not persuaded that he would have forgotten the customs and traditions in Pakistan, where he previously lived, was educated and socialised if he returned to that country. His claims that he would not be able to find work in Pakistan, and would be destitute, lack credibility especially as, on his own admission he has made no attempts to look for work in that country. While he was looking for work and re-establishing himself in Pakistan, his uncle in Sweden who has provided him with financial support previously could do this again. His friend in the UK, offered to support him financially if he remains in the UK. It is reasonable, that this friend might also provide financial support to him by sending money to Pakistan while the appellant looks for work in Pakistan."

It is clear in this paragraph that the judge had regard to a wide range of circumstances relating to the position that the appellant was likely to find on return in terms of understanding how his life in that society would be carried on and his capacity to participate in it so as to have a reasonable opportunity to be accepted there and to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to his private or family life. The judge conducted "a broad evaluative judgment".

11. Still in relation to ground (3), it is said that there was no evidential basis for the judge's assessment of very significant obstacles. However, as paragraph 24 and related paragraphs clearly convey, the appellant's own evidence was that he understood Urdu although not able to read or write it. Even though the appellant stated that he had little contact with his paternal and/or maternal relatives in that country, he himself clearly accepted that there were family members in Pakistan. The judge's assessment of the appellant's likely ability to find work in Pakistan was based on the appellant's own evidence regarding his health and his work experience. It was also the appellant's own evidence that there had been financial support made available to him previously by an uncle in Sweden and a friend in the UK. It was entirely open to the judge to conclude that similar financial support could be provided to the appellant whilst he was looking for work in Pakistan. The

appellant's challenge to this aspect of the judge's findings amounts to no more than a mere disagreement with the judge's findings and associated reasons.

12. Mr Karnik submits that the judge erred in paragraph 23 in stating that the appellant's ability to form an adequate private life in Pakistan should be judged by the standards of Pakistan, not by UK standards. Taken in isolation, that statement of the judge is open to criticism, in seeming to suggest that the standard was a purely relative cultural standard, rather than an objective one. However, read in the context of the decision as a whole, the judge clearly did conduct an objective consideration of whether there were very significant obstacles.

13. The grounds finally (ground (4)) take issue with the judge's alleged failure to give adequate or any reasons why the evidence of the appellant's sister had been rejected, feature which was said to make unsustainable the findings made by the judge in relation to the appellant's role in the life of his nephews and nieces. I consider that this ground also lacks merit. It is clear that the judge took account of the evidence as a whole, including the oral evidence given by the appellant and his sister. The evidence of his sister was set out at paragraph 18 and the judge noted that it was consistent with that given by the appellant. At paragraphs 27 and 28 the judge stated:

> 27. I am not satisfied that if the appellant leaves the UK and returns to Pakistan it would be a disproportionate interference with the right to respect for Article 8 Family Life. The appellants family life with his sister and his nephew and niece was established at a time when his immigration status is precarious. I am not satisfied that his relationship with his sister is other than that of a close relationship between siblings. There is no financial interdependence between them. They live in separate households. They have only recently maintained contact having met each other again, by accident in January 2019. I am aware that because of her immigration status, she has been granted asylum in the UK, the appellants sister would not be able to visit him Pakistan with and/or without her children. However, it would be possible for them to maintain their relationship through social media including, Facebook, Skype, and by telephone. When he was living in Pakistan the appellant could also apply for a visa to come and visit his sister and her family in the UK. I accept that several nights each week the appellant will look after his sister's children when she goes to work on the nightshift but I note that she previously paid a third party to do this. If he were to return to Pakistan it is reasonable to expect that she would be able to arrange and pay for childcare again as she did before.
>
> 28. The appellant's nephew and niece are young children. He has only recently established a relationship with them, having become involved with his sister and her children, only since the end of January 2019. I accept that his relationship with the children may have quickly become close, that he sees them several times each week and stays in the house to

> look after them several nights each week while his sister is working. However, I do not accept that he has become a father figure in their lives and or that he has a family life with them which engages Article 8. The Appellant does not live in the same household as the children. His sister, the children's mother, not the appellant, is their primary carer responsible for their day-to-day care and well-being. The children also have a father who is separated from their mother but, who maintains contact with them. If the appellant returns to Pakistan, he would be able to maintain contact with the children, if their mother and or another adult responsible for their care, consents to this, e.g. by telephone and or Skype. I am not satisfied that these children would suffer by the absence of the appellant. They would remain living with her mother, she would continue to care for them and provide for their physical and emotional needs. I am not satisfied that their lives would be disrupted. I accept they would miss him, as they would miss a grandparent or other close family relative, but given the appellant's precarious position, I do not find it would be disproportionate to return him to Pakistan.

On a fair reading of these paragraphs, the judge was not disputing the account given by the appellant and his sister of the circumstances. At paragraph 18 he noted that the sister's evidence about how the appellant visits her home regularly and looks after the children usually for a couple of nights each week when she is working the night shift is "consistent with the appellant's own and I accepted it". What the judge was doing in paragraph 27 and 28 was conducting an evaluative exercise of the evidence given by the appellant and his sister regarding their relationship and also regarding his relationship with the nephew and nieces. It was entirely open to the judge on the basis of those accepted facts (in particular that they did not live in the same household and were not financially interdependent) to conclude that they did not establish that there was a family life relationship (within the meaning of Article 8(1) of the ECHR) between the appellant on the one hand and his sister and his niece and nephew on the other. In any event, the judge still took these relationships into account as part of the Article 8 assessment (these been relevant to his private life) and very much focused on the factual content of these relationship.

14. It was the appellant's claim that the relationship with his sister had become very close as it had been when they were children and that therefore substantial weight should be attached to this relationship when it came to assessing the appellant's circumstances outside the Rules. In paragraphs 27 and 28 the judge gave sound reasons for concluding that whilst this relationship was significant and whilst his relationship with the children may have quickly become close, it remained the case that the sister was the primary carer and the children also had a father who was separated from the mother but who maintains contacts with them. It was open to the judge to conclude that the mother would continue to care for the children and provide for their physical and emotional needs and that the appellant being required to return to Pakistan would not significantly disrupt their lives.

15. For the above reasons, I conclude that the judge did not materially err in law. Accordingly, the decision of the judge must stand.

16. No anonymity direction is made.

Signed Date: 16 December 2019

Dr H H Storey
Judge of the Upper Tribunal