**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/06910/2018

**THE IMMIGRATION ACTS**

| **Heard at Field House, London** | **Decision & Reasons Promulgated** |
|---|---|
| **On 13 December 2018** | **On 4 January 2019** |

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**G A**
**[Anonymity direction made]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr C Sultan, Counsel instructed by Legal Chambers Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Anonymity**
*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*
Anonymity was granted by the First-tier Tribunal. As this appeal involves protection issues, it is appropriate to continue that direction. Until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

## DECISION AND REASONS

### Background

1. The Appellant appeals against the decision of First-tier Tribunal Judge Housego promulgated on 29 June 2018 ("the Decision"). The Judge dismissed the Appellant's appeal against the Respondent's decision dated 23 May 2018 refusing his protection and human rights claim.

2. The Appellant is a national of Pakistan. He came to the UK as a student on 5 December 2008 with leave extended to 31 May 2014. His leave was curtailed to expire on 7 February 2014. Thereafter he has overstayed. The Appellant made an application to remain based on his family and private life on 17 August 2015 which was refused. He then left the UK to go to Ireland and re-entered illegally. On 13 February 2018, the Appellant was convicted following a guilty plea of sexual assault and sentenced to 125 hours community service. The Appellant was detained thereafter, whereupon he claimed asylum. His claim was dismissed by the Respondent's decision under appeal.

3. The Appellant is in a relationship with another Pakistani national, [R], who is his cousin. There is a dispute about whether they are married. The Appellant claims that he is at risk from another Pakistani man, [T], who remains in Pakistan and to who [R] was engaged before she came to the UK. [R] refused to marry [T] and it is said that when [T] became aware of the Appellant's relationship with [R], he went to the home of the Appellant's brother, fired shots and threatened to kill the Appellant if he returned to Pakistan. The Appellant also claims that he and [R] will be subject to an allegation of zina because they have a child born out of wedlock. The child was not born at the date of the hearing before Judge Housego. The Appellant latterly claimed that there was a risk of honour killing because he and [R] entered into a love marriage.

4. I do not at this stage set out the Appellant's grounds as it became evident on a review of those grounds that some bear no relevance to this case. I will deal with the detail of the grounds that do relate to the case in the discussion which follows. Permission was granted by First-tier Tribunal Judge Keane on 20 July 2018 in the following terms:

> "The appellant applied in-time for permission to appeal against the decision of Judge of the First-tier Tribunal P Housego promulgated on 29 June 2018 in which the judge dismissed the appeal on asylum, humanitarian protection and human rights (Articles 2, 3 and 8) grounds. The grounds disclosed arguable errors of law but for which the outcome of the appeal might have been different. The judge arguably did not arrive at any or any adequate findings in respect of the appellant's claim to have established family life under Article 8 in the United Kingdom. The judge's consideration of the appellant's family life was to be found at paragraph 72 of the decision. The judge did not explicitly find that family life had been established notwithstanding that it was common ground between the parties to the

> appeal that the appellant is a member of a family unit which comprises himself, his partner, [R] and in time their unborn child. The judge found that the appellant had given a less than credible account of events. However, the judge did not refer to background evidence placed before the judge which included evidence comprised within the appellant's bundle of documents and the respondent's country information and guidance document entitled "Pakistan: women fearing gender-based harm/violence." In failing to refer to the background evidence, the judge arguably failed to carry out that global assessment which is the essence of an assessment of credibility. It was arguably especially incumbent upon the judge to consider the evidence in deciding whether the appellant's partner was at risk upon her return to Pakistan given her relationship with the appellant and the prospect of her giving birth to a child outside matrimony. The judge, however, did not embark upon such a consideration. The application for permission is granted."

5. The matter comes before me to assess whether the Decision discloses an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing. It was suggested by Mr Sultan during his submissions that I was embarking upon a re-making of the Decision. As I made clear to him, that is not the case. I am at this stage only deciding whether the Decision discloses errors of law.

**Notice to Show Cause**

6. As is apparent from the adjournment decision which I have appended to this decision, this is not the first time that this appeal has come before me. It came before me on 4 October 2018 at an error of law hearing, on which occasion I was obliged to adjourn the hearing because it was clear that Counsel who appeared on that occasion had not been adequately briefed to proceed (see [5] to [8] of that decision). In light of those matters, I directed the Appellant's solicitors to write explaining their conduct and to show cause why they should not have to pay the costs of that previous hearing.

7. By letter dated 15 October 2018, the solicitors wrote indicating that they had asked for the Respondent's bundle from the Respondent on a few occasions at the time they were instructed and had contacted the previous solicitors also on two to three occasions but had been unable to obtain the Respondent's bundle. They say that the previous solicitors did not have that bundle either as the Appellant has changed representation on three occasions. They do not say why, on receipt of their client's instructions, they did not formally write to the solicitors who did have his file (presumably those first instructed) to seek release of their client's file nor, if they did so, when they did so or why there was a delay in obtaining that file (or that this was the reason why they were unprepared).

8. More concerning was the firm's explanation for not seeking an adjournment of the hearing prior to the hearing date itself. They say that they were instructed to continue to the hearing by their client. It is not clear if they advised that this would be unlikely to be beneficial to the Appellant if Counsel had not seen relevant

papers. Be that as it may, they say they did not seek an adjournment prior to the date of the hearing because, had they done so and had it been refused on paper, this would have been prejudicial to the outcome of an application on the day; at least this is how I understand their explanation. That is tantamount to an admission that they wished to place the Tribunal in the position in which I found myself at the last hearing of having no real option but to adjourn because of lack of preparedness.

9. I do not make an order for costs of the last hearing not because I do not consider one appropriate in light of the solicitor's conduct but because Mr Melvin indicated that he did not wish to pursue an application. He made clear that he agreed that there was a case for costs to be awarded but the procedures for the Respondent to recover costs did not make such an application worthwhile in this case. I confirm that, had that application been pursued, I would have made the order as I consider the solicitor's conduct to be unreasonable and to justify the order. However, there is no purpose to be served in making an order in circumstances where the Respondent does not pursue it. I add that I was also surprised, given what was said in my previous decision, that the solicitors did not consider it appropriate to attend with their Counsel to answer any questions which might arise regarding the content of their letter.

**Discussion and conclusions**

10. I move on now to the substance of the appeal. It is convenient to separate the grounds out into their two parts, particularly in light of the way in which the permission grant is formulated. Grounds one and five relate to the human rights claim. Grounds two, three and four are concerned with the protection claim. It is convenient to take the protection claim grounds first since that claim is part of the background against which the human rights claim had to be assessed. I also begin by observing that, in addition to some of the grounds bearing little relation to the case (for reasons which follow) some paragraphs of the grounds clearly do not apply to this appeal at all. By way of example, at [32] of the grounds reference is made to a section 72 certificate (on the basis that the Appellant has committed a serious crime and is a danger to the community). Although the Appellant has been convicted of sexual assault, he was sentenced only to community service (and he says that the crime was due to a misunderstanding). There is no section 72 certificate (unsurprisingly) and no reference to one in the Decision. What is said at [34] of the grounds about the approach of the Judge to consideration of the certificate therefore is both inaccurate and misleading.

Protection Claim

11. I can deal quite shortly with ground three. It is asserted that the Judge misdirected himself as to the Refugee Convention reason which applies. Paragraph [17] asserts that evidence of past ill treatment of family members is a relevant consideration for assessing future risk. That is right as a matter of law, but it is not said how that affects this case. Paragraph [18] refers to the law about sufficiency of protection

when that has no bearing to the Judge's reasoning. Paragraph [19] refers to the Judge's findings about political opinion when there is no claim based on political opinion (as Mr Sultan confirmed). Paragraph [20] refers to the low standard of proof, again without indicating how the Judge erred in this regard. The Judge refers to the lower standard at [14] of the Decision.

12. Mr Sultan was also constrained to accept that ground two is not relevant to this appeal. That concerns assessment of genuineness of documents produced by an appellant and the Respondent's verification of such documents. However, when I asked Mr Sultan what documents the Judge had to consider and which he said should have been verified, he could point only to background evidence and photographs. As Mr Sultan accepted, the Respondent could not be expected to verify photographs produced by the Appellant. Those exist. It was a matter for the Judge what weight to give their contents and it is not suggested in the grounds that he rejected them for any reason of non-authenticity (see [5] of the Decision for the Judge's reasoning in relation to those photographs). Clearly, there is no obligation to verify background evidence; indeed, much of the evidence relied upon is produced by the Respondent himself – the remainder is available on the internet. The weight to be given to such evidence is a matter for the Judge.

13. That then brings me on to the focus of Mr Sultan's submissions on the protection claim grounds and the ground which found favour with the Judge granting permission – ground four. That ground is headed "failure to resolve conflict of opinion on relevant matter". It is pleaded as follows (so far as relevant):

> "[21] The FTT judge did not rely properly upon the Home Office country evidence in the Secretary of State's country of origin information service report, finds that the country evidence does not disclose any risk to the Appellant. In so doing the SSHD and FTT overlooks the evidence to the contrary as recited by the country report of Home Office, ***Asylum Research Consultancy (Country Report on Pakistan 20 Feb 2015 (published on June 2015) and Article 2 of the International covenant on civil and political rights Vol 12 No 3.*** This is an error of law in the sense described in *R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982:* a failure to resolve conflicts of fact or opinion on material matters.
>
> Credibility
>
> [22] In finding the Appellant not credible, the SSHD view that the Appellant was not telling the truth in his account of past events based on the inherent implausibility of the account. This is an error of law: see ***Y v Secretary of State for the Home Department [2006] EWCA Civ 1223 para [25].***
>
> [23] The FTT did not proportionate to consider the circumstances this an error of law [sic] and was a mere disagreement with a factual finding. He was wrong to take this view: ***Y v Secretary of State for the Home Department [2006] EWCA Civ 1223*** demonstrates that the approach to factual findings is a matter of principle."

14. This ground goes on to assert that removal of the Appellant will breach Article 3 ECHR and the Refugee Convention and at [25] to [27] raises matters which do not

appear to apply (torture of "coup plotters", sufficiency of protection in that regard and risks from the security service at roadblocks against which there is no sufficient protection). Given the confusion in the grounds as to the basis of the Appellant's claim, it may be helpful to summarise again the basis of the Appellant's claim. That claim is that he and his partner ([R]) are at risk on return because they have borne a child out of wedlock and because R was promised to another man before she left Pakistan. It is said that this man is powerful and has threatened the Appellant through one visit to his brother's house. It is said that he would be able to bribe the police to bring false accusations against the Appellant. I mention at this stage that R has made an asylum claim in her own right. Mr Sultan was unable to tell me what stage that has reached (as was the position also before Judge Housego). That is relevant to part of Mr Sultan's submission as to the Judge's error of law in this regard.

15. The basis of the permission grant in this regard is that the Judge failed to consider relevant background evidence. That was therefore naturally the focus of Mr Sultan's submissions. Mr Melvin accepted that the Judge did not consider the background evidence but said that it had no relevance because of the Judge's factual findings. I therefore turn to consider what those were.

16. I begin by noting that the Appellant sought an adjournment of the hearing before Judge Housego because he said that [R] wished to give oral evidence but was unable to attend as she was heavily pregnant at that time (see [26] to [29] of the Decision). As the Judge pointed out, [R] was due to give birth on 17 July 2018 (some three weeks after the hearing). Mr Sultan informed me that she gave birth prematurely on 29 June 2018, some three days after the hearing but the Judge obviously could not be expected to know that this would be the case. It was not said for example that she had gone into labour or been admitted to hospital. As the Judge records at [28] of the Decision the Appellant's representative said that "he had no medical evidence of any problem." [R]'s statement says only that she is "unable to attend any hearings because my feet suddenly swell, and my lower aches considerably [sic]". That statement is dated 13 June 2018 and yet no prior application for an adjournment was apparently made on this basis. It cannot be said therefore, on the basis of the information before him, that it was unfair for the Judge to refuse the adjournment (nor is that the basis of the pleaded grounds of appeal).

17. The Judge heard oral evidence from the Appellant. That evidence is set out at [30] to [50] of the Decision. No criticism is made by the Appellant of the Judge's record of his evidence. The Appellant is recorded as saying at [47] of the Decision that he had wanted [R] to give evidence for him but was unable to attend for medical reasons. He had not asked her family members who are in the UK to attend to give evidence in his support.

18. The Judge identified a number of inconsistencies in the evidence before him and other concerns about the credibility of the account at [53] onwards. Of particular

relevance to the Appellant's ground, as I pointed out to Mr Sultan during his submissions, are the findings at [58] to [66] of the Decision as follows:

> "[58] Towards the end of his cross examination the appellant said that he feared return as there was a risk of an "*honour*" killing as this was a love marriage. There are 2 problems with this assertion. First it is predicated on there being a marriage and the appellant says there is none, and second it requires the appellant to be in fear of the family he says approve of the marriage. There is the asserted risk from someone said to be a fiancé, but this is not credible either. If [R] was forced to give up work and look after [T]'s family and do their housework that does not sit with [R] not being married to him, nor with her ability to get a visa to come to the UK and do so, according to the appellant without opposition from her family.
>
> [59] The appellant states that he regards [R] as his wife, and he referred to her as such in his witness statement and in his oral evidence. The Home Office assertion that it is highly likely that they are in fact married by Islamic law is sound. The family of the appellant and the brother of [R] in the UK all accept them as married. It is culturally unlikely that there would be sex outside marriage, and it is unlikely that the appellant and [R] would marry in secret, and unlikely that the family and [R]'s brother would accept that this had occurred without their knowledge until he told them also that she was pregnant by him. It is not reasonably likely that there is any other course of events than that [R] came to the UK to marry the appellant as the wish of the family for the cousins to marry, that the appellant did marry her and that he brings this claim in furtherance of his ambition to remain in the UK.
>
> [60] However it is not necessary to make a finding of fact to the effect that the appellant and [R] are married, as the evidence of the appellant is that he has told his family and friends in Pakistan that they are married. He has told her family in the UK (which includes her brother) that they are married, and his evidence is that they all believe him.
>
> [61] He asserts risk from an allegation of zina, proved by the existence of their child, but his evidence is that everyone (including [T]) believes that he and [R] are married. There is no risk. The appellant then says that if they rent a property the landlord will demand sight of a niqah. The appellant says that he intends to marry [R] and that she wants to marry him. There is no evidence that there is any impediment to a religious marriage now, and those in Pakistan will not be concerned one way or the other whether there is a marriage according to English law. Nor is there any evidence that the child's UK birth certificate will be demanded and the date compared with the date on a niqah. There is no risk of the Hudood ordinance or zina being a genuine subjective or objective fear of persecution.
>
> [62] The appellant also asserted fear of [T]. The appellant's evidence is that [T] has not troubled the brother of the appellant save on one occasion in late November 2017. [T] has never troubled anyone else in the family of the appellant.
>
> [63] While this is not the appeal of [R] is through her that the appellant claims to be at risk. The account is inherently implausible. [R] was educated to masters degree level, got a job, and did that job, and got a visa to come to the UK. This is a woman who has not been oppressed and made to leave

education early and been forcibly married. He says that she bought time by getting the visa, but she was able to get it. Nor is there any obvious reason why her family should agree to her marrying an ill educated man with no real advantage. He is said to be powerful but there is no credible evidence of that. Her witness statement states that the family refused permission subsequent to the engagement.

[64] I note that the appellant might have difficulty with the brother of [R] finding out that the basis of the claim was that they were not married, when the brother had been told that they were. However the appellant did not say that this was the reason, even when offered the opportunity to explain why he had not asked the brother to attend and give evidence.

[65] Nor have her family, including her brother come to give evidence for the appellant. This would be explicable if they were not on good terms with the appellant. But the appellant said that her brother accepted that they were married, accepted that the marriage had occurred without him being there and was supportive of the relationship. She lived with her brother, and the brother was also his cousin, as [R] was his cousin, and he had lived with her brother before she came to the UK. This is a substantial *TK (Burundi)* point against the appellant.

[66] The appellant was asked why they were not present. He said he had not asked them to come. When asked why note he said that he wanted [R] to give evidence but she had high blood pressure and high sugar levels and that was the reason. He said "*There are certain complexities I do not want to disclose*" and that he wanted only [R] there. I said that this was entirely his right, but he could not expect me to give credence to that explanation without more. He said he would tell me whatever I asked him: I said that that was not my role: it was a matter for him."

19. In short summary of those findings, the Judge did not accept that the Appellant and [R] were not in fact married. Whether or not that was the case, the Judge found on the evidence that their families believed they were. As such, there was no reason for adultery to be alleged. The families would not know that adultery had taken place. The risk from [T] was not accepted in part because there had been one threat and no further incidents indicating a continuing risk and in part because the Judge did not accept that [R]'s family would have forced her into a marriage with [T] and did not accept that there was any risk from this man. The Judge did not accept the (late) claim of risk of honour killing. The Judge pointed out that this was inconsistent with the Appellant's case that the couple are not in fact married and second it is inconsistent with the evidence about the family's approval of the marriage.

20. Mr Sultan drew my attention to some of the background evidence. That consisted in the main of passages from the Home Office's own country information showing that adultery is an offence in Pakistan and honour killings take place there. I do not have any difficulty with accepting that submission. However, the relevance of such material depends on there being a factual claim underlying the risk which the background evidence discloses may arise.

21. There is no merit to [22] of the grounds as set out above. The Judge did not find the Appellant's claim not to be credible due to its implausibility. He determined that the evidence did not support the Appellant's account. Had he found, for example, that honour crimes do not occur in Pakistan or that adultery is not an offence or even that the appeal failed due to sufficiency of protection, it may well have been an error of law if the background evidence were not considered. However, the Judge found that the facts underlying the claimed risk were not true.

22. Mr Sultan also directed my attention to an article in the Respondent's bundle referring to the honour killing of a woman who he said was educated. He said therefore that the Judge's assumption at [63] of the Decision that it was implausible that [R] would be the subject of an honour killing because her family allowed her to be educated was an error. He said that the articles showed that educated women can also be killed for this reason. He drew my attention to the final sentence of paragraph [63] which he said constituted a finding by the Judge about the attitude of [R]'s family. However, that sentence is if anything supportive of the Judge's view in the remainder of that paragraph. At [5] of [R]'s statement she herself says that she did not want to marry [T] after she graduated because she wanted to work and "they refused to give me permission." As the Judge says, that suggests that [R]'s family refused to permit the marriage to go ahead. If it is suggested that this is a reference to [R]'s family not permitting her to work, that is inconsistent with [7] of the Appellant's statement that she worked as a Study Consultant. The ones who are said to have prevented her working are [T]'s family ([6] of the Appellant's statement) and, as the Judge points out at [58] of the Decision, that is inconsistent with [R] not having married [T] and that she was able to leave Pakistan without any opposition from her family. It is also worthy of note that [R] says nothing in her statement about her family forcing her to marry [T] (as the above suggests if anything the opposite) and notably says nothing about her parents being opposed to her marrying the Appellant. Nor I note does she say anything about she and the Appellant being at risk due to them having a child out of wedlock.

23. That brings me on to the remainder of Mr Sultan's submissions on this ground. I asked him a number of times if he was able to say in what way the Judge's findings about the facts of the claim involved an error of law. His answer was consistently only that (a) the Judge should have allowed an adjournment to permit [R] to give evidence and (b) that the Judge had "cherry-picked" from the evidence and failed to refer to evidence which supported the Appellant's case.

24. In relation to the first of those reasons, I have already explained why the Judge was entitled to refuse the adjournment. In any event, as I note above, [R]'s witness statement does not support the Appellant's case in various material respects and her evidence therefore would be unlikely to add to rather than detract from the adverse credibility findings.

25. Dealing with the second, Mr Sultan gave no examples other than in relation to background material of the Judge failing to have regard to evidence. That is understandable given that the only evidence particular to the Appellant's own case on protection is his statement (which was explored in oral evidence at the hearing as recorded in the Decision), the statement of [R] (which I have dealt with above and for the reasons given provides limited support to the Appellant's case and then only in relation to the risk from [T] which the Judge rejected for other reasons) and photographs which, as the Judge observes at [5] of the Decision prove nothing about the risk said to come from [T]. As Mr Melvin pointed out, there was no evidence from those in Pakistan said to have been threatened.

26. Although the standard of proof which applies to appellants is a low one, the burden still lies on an appellant and in this case the Appellant failed to discharge it. The Judge has not made any error of law in relation to his findings and conclusions about the protection claim for the reasons he gives.

Human Rights Claim

27. That then brings me on to the Article 8 ECHR claim. Ground one deals with the findings in relation to family life and ground five, private life.

28. In relation to ground one, paragraphs [5] and [6] of the grounds once again misrepresent the factual position. First, there was no child in being at the time of the hearing before Judge Housego. That child was not by then born and the Judge had to consider the position as at date of hearing. Second, paragraph [6] appears to suggest that [R] (and now her child) have a right to remain in the UK. True it is that if [R] does indeed have a pending asylum claim or appeal still pending, she cannot be removed at present. However, she does not have any right to remain in the UK for the purposes of the Immigration Rules. She is not a British citizen and nor is she settled.

29. The point which appears to have found favour with the Judge granting permission appears at [7] of the grounds as follows:

> "[7] The First-tier Judge further erred in law in simply referring to the fact that 'he has a private/family life in this country' of the First-tier Judge's determination dated 29 June 2018 without setting out the individual relationships and determining the strength of each element of the family life. By failing to do so the First-tier Judge deprives the parties of being able to determine whether the interests of the Child in this case were given appropriate weight (in particular, their right to family life might have been viewed as a 'third party' right in human rights terms, not apt for evaluation as part of an appeal, although they would have remained live considerations in the evaluation of compassionate circumstances under the Immigration Rules)."

30. As I pointed out to Mr Sultan during his submissions, Article 8 ECHR has to be considered in the context of the factual matrix which applies. In this case that is

that neither the Appellant nor, as I understand it, [R] have any right to be in the UK beyond there being a barrier to removal whilst their asylum claims and appeals are determined. That is not, as Mr Sultan appeared to understand, a conclusion which I am reaching about the merits of the claim but merely my understanding of the factual position as it existed at the date of hearing.

31. The Judge dealt with this aspect of the appeal as follows:

> "[72] There is an Article 8 claim. If based on family life it must fail as the appellant and [R] (and their baby when born) may return to Pakistan together. If [R]s asylum claim succeeds he may made another Article 8 claim (although as the relationship was formed when the appellant had no status, and the child will not be a British citizen, S117A, B and D of the Nationality, Immigration and Asylum Act 2002 and *Rajendran* would seem to form a significant hurdle for such a claim).

32. There is no error of law in that assessment; indeed, I can see no other assessment which could have been made by the Judge on these facts. The Appellant's protection claim had failed. He was therefore not entitled to stay. The Judge had been told that those representing the Appellant had no information about [R]'s asylum claim. Certainly, the Judge was not told that this had succeeded. As such, she had no right to remain either. The family would be returning to Pakistan as a unit (once there were no longer any barriers to removal based on [R]'s claim/ appeal). The Judge did not find that there was no family life based on the relationship. His assessment is based on the fact that there would be no interference with family life occasioned by removal. There is also no merit to the suggestion that Section 117C Nationality, Immigration and Asylum Act 2002 ("Section 117") was improperly applied. The Appellant is not a "foreign criminal" within the definition in Section 117D and Section 117C has no application. In any event, neither of the exceptions in Section 117C could have any application to this case given the lack of any right to remain of the Appellant, [R] or their child.

33. Insofar as the best interests of the couple's child is concerned, there are two reasons why I consider that there was no requirement to refer to section 55 Borders, Citizenship and Immigration Act 2009 ("Section 55"). The first is that the wording of Section 55(1)(a) requires the Respondent to have regard to the "need to safeguard and promote the welfare of children who <u>are in the United Kingdom</u>…". As the Appellant's child was not born at date of hearing, there was no requirement on the Respondent to consider the child's interests and equally no requirement for the Judge to do so. The child was not "in" the United Kingdom at that time. Second, it is difficult to see in any event how a Judge or any other decision maker can be required to have regard to the interests of a child about who he does not and cannot know anything relevant to such interests. Suppose for example that a child were later born with a serious medical problem not envisaged in the course of pregnancy. The interests of such a child might very well be different to those of a healthy child. For those reasons, I reject Mr Sultan's

submission in this regard. He could not direct me to any authority in support of his proposition that Section 55 applies in such a case.

34. Further and in any event, the Judge has considered Section 55 at [75] of the Decision and the Appellant has not said in what way that paragraph involves legal error.

35. I turn then to ground five which concerns the Appellant's private life. That ground contains a number of paragraphs which are not relevant to this case. I have already noted the reference to a section 72 certificate which does not exist. Paragraphs [29] to [31] of the grounds refer to a business which is not referred to in any of the evidence. That leaves only [35] of the grounds which repeats the matters pleaded in relation to the Appellant's family life with which I have already dealt and the failure to consider background evidence in relation to the protection claim with which I have also already dealt.

36. I have considered the Judge's assessment of the interference with the Appellant's private life as appears at [73] and [74] of the Decision. Whilst the Judge's mention of "unduly harsh" at [74] of the Decision might suggest that the Judge has in mind Section 117C which, for the reasons I have already set out does not apply, that error could not be material because neither exception as set out in Section 117C could apply in any case (based on the definitions in Section 117D), the Judge has not referred to Section 117C at [72] of the Decision, a private life claim would fail for reasons given at [73] of the Decision and, as the Judge observes at [74] of the Decision "[t]he proportionality assessment's *Hesham Ali* balance sheet is on one side replete with arguments for the Secretary of State and on the other devoid of any for the appellant." That is a conclusion which is inevitable on the evidence and facts as found without any reference to Section 117C.

**37.** For the above reasons, the grounds disclose no error of law in the Decision. I therefore uphold the Decision of Judge Housego promulgated on 29 June 2018 with the consequence that the Appellant's appeal remains dismissed.

**DECISION**

**I am satisfied that the Decision does not involve the making of a material error on a point of law. I uphold the Decision of First-tier Tribunal Judge Housego promulgated on 29 June 2018 with the consequence that the Appellant's appeal remains dismissed.**

Signed Dated: 17 December 2018

Upper Tribunal Judge Smith

**ANNEX: ADJOURNMENT DECISION**

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/06910/2018

**THE IMMIGRATION ACTS**

**Heard at Field House, London**
**On Thursday 4 October 2018**

**Determination Promulgated**

……

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**G A**
**[Anonymity direction made]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms F Ramzan, Counsel instructed by Legal Chambers Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

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to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

## ADJOURNMENT DECISION AND DIRECTIONS

1. This appeal comes before me to decide whether there is a material error of law in the decision of First-tier Tribunal Judge Housego promulgated on 29 June 2018 ("the Decision"). Permission to appeal was granted by First-tier Tribunal Judge Keane on 20 July 2018.

2. On 2 October 2018, Legal Chambers Solicitors informed the Tribunal that they had taken over conduct of the Appellant's case. They filed a notice of change of solicitors. It was clear from their e mail that they were aware of the hearing on 4 October as they expressly referred to it. They did not enquire as to the nature of the hearing nor make an application for an adjournment. Prior to their involvement, the Appellant was represented in the making of his application for permission to appeal by FR Solicitors and before that, at the First-tier Tribunal hearing, by Duncan Lewis solicitors.

3. At the start of the hearing, Ms Ramzan made an application for an adjournment. She did so for essentially three reasons. First, she said that this was a substantive hearing but that her client and his partner were not there to give evidence. Second, she said that she did not have all the documents necessary to proceed. She said that those instructing her did not have the Respondent's bundle and in spite of attempts to obtain it, did not yet have a copy. Third, she said that the Appellant's partner's asylum claim remained outstanding and the Appellant's claim depended in large part on that of his partner who claimed she would be at risk of honour killing on return as she had been engaged to another man before leaving her home country.

4. In relation to the first reason, I pointed out to Ms Ramzan that this was primarily an error of law hearing and therefore there was no immediate reason why her client should need to give evidence. If I were to find an error of law in the Decision, I would consider an adjournment for a resumed hearing to take that evidence if such was required. Ms Ramzan pointed out that permission to appeal had been granted but that muddles two concepts. Permission to appeal the Decision is only a finding that the grounds are arguable. The Appellant then has to establish that the error of law is made out. Her solicitors should be well aware of the distinction.

5. When I enquired about the documents which Ms Ramzan had been given by her Instructing Solicitors, I became very concerned. She had the Appellant's bundle which was before the First-tier Tribunal but had neither the permission grant nor indeed the Decision under appeal. She submitted that this was because, as she said, the Appellant's new solicitors did not have the Respondent's bundle in

which those would be found. I am very surprised to be told that the Appellant's new solicitors have taken on a case and presumably advised the Appellant that they would send Counsel along to the hearing without any knowledge of the basis on which they were doing so. They could not possibly instruct Counsel consistently with their professional obligations without sight of the crucial documents.

6. I enquired what steps had been taken to obtain those documents prior to the hearing by those instructing Ms Ramzan. She said she was told that requests had been made for the documents, but she did not know whether those were requests made to the Respondent or, more appropriately, to the previous solicitors for their file of papers. She had not been made aware of any problem in the release of the previous solicitor's file, for example, because fees had not been paid. She could not contact the caseworker as he was on a plane bound for Saudi Arabia and the person with whom she spoke had told her only that he had left instructions that he had tried to get the bundle.

7. I appreciate that if the new solicitors do not have the file of papers from a previous firm, then they may be in difficulties preparing for the hearing if their client does not himself have the papers (although he ought at least to have the Decision since that was apparently sent to him and his solicitors). However, if that was the position, then an application should have been made for an adjournment prior to the hearing. The solicitors should not have placed Ms Ramzan in the unenviable position of attending a hearing with insufficient instructions or papers. Such is also inconsistent with the solicitor's professional duties to this Tribunal and to their client.

8. Whilst Mr Melvin was reluctant to agree to the adjournment, he accepted my reasoning that an adjournment ought to be given because, although Ms Ramzan was given my spare copy of the Respondent's bundle at the hearing, she had no caseworker or client from whom to take instructions at that time. I also considered that the Appellant ought not to be prejudiced by the professional failings of his solicitors.

9. For those reasons, I agreed to the adjournment sought (see directions below for re-listing). A copy of the Respondent's bundle was provided to Ms Ramzan and the current solicitors therefore have no excuse not to be properly prepared for the next hearing.

**10.** I also indicated that I was giving a notice to the Appellant's solicitors to show cause why they should not pay the costs of this hearing, pursuant to rule 10(3)(c) and/or (d) of the Tribunal Procedure (Upper Tribunal) Rules 2008 on the basis of their conduct in failing to make an application for an adjournment prior to the hearing when they knew or ought to have known that they could not properly prepare for or proceed with the hearing due to lack of papers (if that is the case)

and in instructing Counsel with insufficient material on which to base those instructions.

**DIRECTIONS**

1. **The error of law hearing of this appeal (with re-making of the decision thereafter if appropriate) is adjourned to the first available date after Monday 22 October 2018. Time estimate 1.5 hours.**
2. **Within 7 days from the date when this decision is sent, the Appellant's solicitors, Legal Chambers solicitors shall provide written representations in response to the matters raised at [5] to [7] above and shall provide reasons in response to the notice at [10] above, stating why they should not be liable to pay the Respondent's costs of the hearing on 4 October 2018.**

Signed Dated: 4 October 2018
Upper Tribunal Judge Smith