**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/11500/2018

**THE IMMIGRATION ACTS**

| **Heard at Field House, London** | **Determination Promulgated** |
|---|---|
| **On Wednesday 3 April 2019** | **On Monday 29 April 2019** |

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**QSK**
**[Anonymity direction made]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Ms K Tobin, Counsel instructed by Shanthi & Co, Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Anonymity**
*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*
An anonymity order was not made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. Unless and until a tribunal or court directs otherwise, the Appellant, QSK, is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## DECISION AND DIRECTIONS

### Background

1. By a decision promulgated on 11 February 2019, I found an error of law in the decision of First-tier Tribunal Judge Quinn promulgated on 1 November 2018 allowing the Appellant's appeal. I therefore set aside that decision and gave directions for a resumed hearing to re-make the decision. My error of law decision is annexed hereto for ease of reference.

2. The first of my directions required the Respondent to provide a written explanation why the Appellant had been granted leave to remain based on her private and family life. This was a factor on which Judge Quinn relied when allowing the appeal and which I found to be speculative reasoning. By a letter dated 22 February 2019, the Respondent wrote to the Tribunal in the following terms:

> "In accordance with directions received (12th February 2018). The Respondent confirms that the appellant was granted leave to remain under Section D-LTRP.1.2 of Appendix FM on the basis that her relationship with her partner for 30 months expiring on 15 March 2021."

3. Unfortunately, Mr Avery did not have a complete copy of my earlier decision and had not recognised the significance of the letter of 22 February. As such, he was able to provide only very limited assistance in his submissions when dealing with this point. I intend no criticism of either him or the writer of the letter, but I was not assisted by the Respondent's response on this point as I come to below.

### The Issue

4. As I identified at [2] and [3] of my earlier decision, the Appellant's protection claim is that she will be at risk from her family because she has married in the UK and her family will force her into an arranged marriage if she returns to Pakistan. The Respondent does not dispute the credibility of that claim but says that she can relocate to another area of Pakistan to avoid her family. The issue therefore is whether internal relocation will avert the risk and whether it is unduly harsh for the Appellant to be expected to go to live in another part of Pakistan. The Appellant says that, in particular, her brothers would be able to trace her if she were to return to any part of Pakistan. It is also submitted on her behalf that it would be unduly harsh to expect her to go to live in another part of Pakistan, particularly in circumstances where the Respondent must accept that there are "insurmountable obstacles" to the Appellant returning to Pakistan with her husband as otherwise leave to remain would not have been granted based on that family life.

### The Evidence

5. Although I set aside the decision of First-tier Tribunal Judge Quinn, it is convenient to adopt the facts as set out at [1] to [9] and [22] to [26] of his decision, save that, in

relation to the Appellant's eldest brother, he is no longer a Major in the Pakistan Army. That was one of the errors which I identified in my earlier decision.

6. In addition, I have read and take into account the content of the Appellant's asylum interview, her statement dated 19 October 2018, that of her spouse, [EM], also dated 19 October 2018, the statement of the Appellant's sister similarly dated 19 October 2018 and the oral evidence given by the Appellant at the hearing before me. I have also had regard to the Respondent's reasons for refusing the protection claim as set out in the letter dated 17 September 2018.

7. The Appellant gave her evidence via an Urdu interpreter. She and the interpreter confirmed that they understood each other.

8. The Appellant was asked questions specifically about her two brothers who remain in Pakistan. Her father is dead and therefore those two brothers are the head of the household in Pakistan.

9. In terms of the brother who was a Major in the Pakistani army, the Appellant confirmed that he resigned six or seven years ago. She said, however, that he retains contact with former colleagues including friends and other relatives who are also in the army. Her other brother is the Assistant to the General Manager of Pakistan's Atomic Energy Agency which forms part of the Pakistani military.

10. When asked how she knew about her brothers' contacts in Pakistan, the Appellant admitted that she had no direct contact with them and has not spoken to either of them since she left Pakistan. However, she says that her sister who lives in the UK and with whom she remains in contact still speaks to their brothers and it is through those conversations that she is aware of the contacts that both brothers have and retain which would allow them to find her if she returned to Pakistan. There is no mention of any such conversations in the statement of the Appellant's sister.

11. The Appellant deals with the risk and difficulty of internal relocation in her witness statement as follows:

> "[39] The Home Office letter states at paragraph 33 that '[I] could relocate to another area of Pakistan to avoid coming to the attention of [my] brothers'. I do not think this is reasonably possible. Both my older brother, [SQH] (now aged 52) and [SAH] (aged 45 years), both have strong links to the Pakistani Military by either having held the rank of Major (until his recent retirement, but which has not reduced/mitigated the close links he has with the establishments and those in operation control) in the case of the former and Assistant to the General Manager of the Pakistan's Atomic Energy Agency which falls within the Military and has overall responsibility for Pakistan's Nuclear Weapons Programme.
>
> [40] My brother's high ranking positions both within the Military hierarchy and their relatively high social profile within the country, coupled with the fact that each arrival to the country is biometrically scanned and tagged at passport control, means that they will be immediately alerted to my arrival to the

country and given the very tight security restrictions that operate in that country and the reach of the army to anywhere, I do not think it is realistic to expect my return to Pakistan being unnoticed by my brothers or my family.

[41] Separately, in my entire life I have never lived alone in Pakistan; I have always been cocooned inside my family's home in Rawalpindi, being taken/escorted to and from school, tuition, even when I worked for a travel agency run by a close friend of my brother-in-law for a few months as receptionist, I was escorted to and from work, etc, and have no idea how I can live and/or survive in that country either on my own or with my foreign husband. Nor do I have the skill, experience or know-how to live under the radar or in anonymity to such an extent to evade detection by the authorities. Both of us will stand out like sore thumbs and will be easily picked out by those who will be looking for us."

12. The Appellant's lack of independence is reflected in the statement of her spouse who speaks of her as a "delicate and fragile human being" and the statement of her sister who says the following:

> "[12] Even though she has lived in the UK these past three years, either her husband or I have to escort her whenever she leaves the house otherwise she gets frightened and afraid. I believe this is because of the trauma she suffered in Pakistan and I fear what would happen to her if she is returned to Pakistan either now or in 30 months time."

**Discussion and Conclusions**

13. I begin with the risk which the Appellant claims of being discovered by her brothers on return to another part of Pakistan due to their connections. I am unpersuaded by her evidence in this regard. Her own views of the connections which she claims they have and would use to find her may well be genuinely held. However, they are speculative. There is no evidence that the Appellant's brothers in fact have such contacts or how those contacts would be used to alert them to the Appellant's return via the use of biometric passport information. The Appellant's sister who the Appellant says has maintained contact with their brothers has provided no evidence about the conversations which she has with them nor provided any supporting testimony as to continuing high level contacts which would enable them to discover the Appellant's return. Nor indeed does the Appellant's sister say anything in her statement about any continuing interest of their brothers in the Appellant.

14. Neither do I accept Ms Tobin's submission that the grant of leave to remain based on the Appellant's Article 8 rights leads inexorably to the conclusion that it would be unduly harsh for the Appellant to internally relocate within Pakistan. I have set out the content of the Respondent's explanation for the grant of leave to remain on this basis at [2] above. That makes clear that the grant is on the basis of the Appellant's relationship with her partner.

15. Mr Avery accepted that the grant could only be on the basis that there are insurmountable obstacles to family life continuing in Pakistan because the Appellant

did not have any leave to remain when she married and applied for leave based on her family life. The grant must therefore be on the basis that paragraph EX.1 of Appendix FM to the Immigration Rules applies (unless the grant is based on a casework error).

16. However, that does not mean that the insurmountable obstacles which the Respondent accepts have anything to do with the Appellant's protection claim. I find it extremely unlikely that this is the case having regard to the evidence. The Appellant's spouse is a British citizen but originally a Turkish Cypriot. Although he is a Muslim, he speaks no Urdu. He has an adult daughter and grandchildren living in the UK. Most importantly, he has a variety of medical conditions set out at [5] of his statement which have rendered him unable to work since 2012. He also refers at [7] of his statement to "a very traumatic set of circumstances" which, coupled with his medical conditions and inability to work set him at "a particularly low ebb" before he met the Appellant. He says at [10] of his statement that his own circumstances make the prospect of relocating with the Appellant and evading her family impossible. I find it more likely that it is those "personal, medical, financial and other circumstances" which have led to the Respondent accepting that family life could not continue in Pakistan, a country moreover with which [EM] has absolutely no familiarity or connection.

17. However, since it is accepted that family life could not continue in Pakistan and [EM] himself says that it would be impossible for him to go there to live, I have to consider the prospect of the Appellant returning there alone and going to live in a part of Pakistan with which she is unfamiliar and where she has no connections.

18. I have regard to the prevailing country guidance of SM (lone women-ostracism) Pakistan (CG) [2016] UKUT 67 (IAC) which states as follows so far as relevant:

> "…
>
> *(2) Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.*
>
> *(3) It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.*
>
> *(4) It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.*
>
> *(5) Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case."*

19. The Appellant would be returning to an area of Pakistan which she does not know, on her own. Her husband describes her as a fragile person. That is echoed in the evidence of her sister. The Appellant herself is obviously fearful of returning anywhere in Pakistan because she considers there to be a risk that her brothers will find her and force her into an arranged marriage (as has happened with her sisters). Although I consider the risk of discovery to be speculative, that she has what is accepted to be a genuine fear of being forced into an arranged marriage is a relevant factor. Added to that is the Appellant's own description of her circumstances in Pakistan before she came to the UK where she was always escorted when she went to college or work.

20. I accept that the Appellant has a college education. She attended college in Pakistan for one year after school and then moved to university but did not complete her degree. However, as I found at [22] of my earlier decision (agreeing with Judge Quinn's finding in this regard), the Appellant does not have much work experience. There is no evidence that she has worked in the UK. Her experience is limited to a few months before she came to the UK and, even then, the job she obtained was in an agency run by a close friend of her brother-in-law. I accept, as stated at [41] of her statement, that the Appellant does not have the wherewithal to live independently in another part of Pakistan where she would be without any male support (because [EM] would not be able to go with her). Obviously, she cannot rely on support of family members in Pakistan as it is they who she fears. In spite of her education, and having regard to the prevailing country guidance, I am satisfied that it would be unduly harsh for the Appellant to internally relocate within Pakistan.

21. For those reasons, I allow the appeal on the basis that the Appellant has a well-founded fear of persecution on return to Pakistan. Removal would therefore breach the United Kingdom's obligations under the Refugee Convention.

**DECISION**

**The Appellant's appeal is allowed.**

Signed Dated: 23 April 2019
Upper Tribunal Judge Smith

**ANNEX: ERROR OF LAW DECISION**

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/11500/2018

**THE IMMIGRATION ACTS**

**Heard at Field House, London**
**On Wednesday 30 January 2019**

**Determination Promulgated**
11 February 2019

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**
**Q S K**
**[Anonymity direction made]**

Respondent

**Representation:**
For the Appellant: Ms S Jones, Senior Home Office Presenting Officer
For the Respondent: Mr R Solomon, Counsel instructed by Shanthi & Co, Solicitors

**Anonymity**
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An anonymity order was not made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. Unless and until a tribunal or court directs otherwise, the Appellant, QSK, is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

## DECISION AND DIRECTIONS

### Background

1. This is an appeal brought by the Secretary of State. For ease of reference, I refer hereafter to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Quinn promulgated on 1 November 2018 ("the Decision"). By the Decision, the Judge allowed the Appellant's appeal against the Respondent's decision dated 16 September 2018 refusing her protection claim. The Appellant has been granted leave to remain based on her family and private life but is still entitled to appeal the refusal of her protection claim in order to receive recognition of her status as a refugee in the event that her claim on this ground succeeds.

2. The Appellant is a national of Pakistan. Her fear of return to that country is based on the fact that she has married in the UK, that her family in Pakistan is strict and would force her into an arranged marriage in Pakistan against her will and notwithstanding her legal marriage to another man in the UK.

3. The Respondent does not take issue with the credibility of the Appellant's claim but says that she can return to another area of Pakistan to avoid her family. The Judge considered that this conclusion conflicted with the Respondent's acceptance that the Appellant is entitled to remain in the UK on the basis of her family and private life because he thought it likely that this was based on there being insurmountable obstacles to continuation of family life in Pakistan. The Judge also concluded that the Appellant's family would be likely to have the influence to find her if she returned to Pakistan and that internal relocation is not an answer to the claim.

4. Although the Respondent does take issue with the Judge's findings about internal relocation, the main thrust of the grounds is the conduct of the hearing before the Judge. I will deal with that in more detail below. The Respondent asserts in his ground one that he has been disadvantaged by the Judge's conduct and that the hearing was procedurally unfair. Ground two raises mistakes of fact which the Judge is said to have committed.

5. Permission to appeal was granted by First-tier Tribunal Judge Lambert on 28 November 2018 in the following terms so far as relevant:

> "…
>
> [3] Ground 1 takes issue with the Judge's refusal to allow cross examination or submissions by the Home Office Presenting Officer who had arrived late at the hearing centre to find that although notification of the late arrival had been provided, the appeal had commenced. The ROP confirms that the Judge had been notified that the Appellant representative would be late and that the hearing had been put back to 10.25 however the judge then noted that there was 'no HOPO no message'. There is a note at 10.47 stating that the 'PO arrives' and that he had 'thought he had a prep day'. At that point the note s record that the Appellant representative submissions had not yet begun.

> [4] The Respondent message as to being late may not have reached the Judge, but there is no record of any enquiries having been made of the HOPOU by the Judge's clerk and there is certainly an arguable procedural error amounting to an error of law in the contentions made as to how the hearing was conducted once the PO had arrived. The judge in fact recorded at paragraph 16 of the decision that there been no representative for the Respondent.
>
> [5] The further ground that the appeal being allowed under 'paragraphs 336 and 339M/339F of HC395 makes no sense, is also arguable.
>
> [6] There are therefore arguable errors of law disclosed by the application."

6. The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

**Submissions and Discussion**

Ground one

7. I begin with the Judge's conduct of the hearing before him. I have had regard to what the Record of Proceedings shows as set out in the grant of permission.

8. Ms Jones handed to me a file note written by Mr Daniel Allen who was the Presenting Officer at Feltham who attended the appeal hearing. As Judge Lambert notes in her grant of permission, the Judge's assertion at [16] of the Decision that there was no representative for the Respondent (as also reiterated in the heading) is factually inaccurate. It is clear from the Record of Proceedings that Mr Allen arrived after the start of the hearing, either before or during submissions by the Appellant and after the Appellant had given evidence. In fact, it appears that the Appellant's representative may have been part-way through submissions.

9. Although Mr Solomon who was also the Appellant's representative before the First-tier Tribunal submitted that there is some factual dispute between the parties as to what occurred at the hearing, I do not discern such dispute from the documents I was shown. Mr Solomon did not provide a witness statement as would be the normal course where there is a complaint about the conduct of the hearing, but I accept that this is a slightly unusual case as the complaint comes from the Respondent and not the Appellant. I have therefore taken into account what is said in the Appellant's Rule 24 notice about what occurred. I also clarified with Mr Solomon during his oral submissions my understanding about what had happened which is as follows.

10. There is no dispute that Mr Allen was not in attendance at the start of the hearing. Neither the Judge nor Mr Solomon takes issue with Mr Allen's reasons for not being on time. There is said to have been confusion about the roster and Mr Allen did not therefore appreciate that he was due to be in court; he thought he had a preparation day. It is said that when he discovered that he was due in court, he informed the Tribunal that he would be attending late. Whether or not that occurred, I accept that the Record of Proceedings does not show that the Judge was informed of this.

11. However, the Record of Proceedings does show that Mr Allen arrived, as Judge Lambert states (and Mr Solomon accepts), at 1047 hours and therefore about twenty minutes after the start which had been postponed due to lateness of the Appellant's representative.

12. Mr Solomon says that his submissions began at about 1040 hours and therefore he had only just begun his submissions. Mr Solomon's account of what happened after Mr Allen's arrival is as follows:

> "[1b] … The judge indicated he would continue hearing the appeal as if there was no appearance by the respondent. Mr Allen did not object to this course. He did not apply to the judge to re-open the evidence in order to cross-examine the witnesses or request to make oral submissions. He was content to proceed as indicated by the judge and the hearing ended at 11.10. No complaint was made at the time of the hearing or before promulgation of the determination. Therefore, the judge cannot justly be criticised for proceeding as he did; …"

13. Mr Allen's account is slightly ambiguous, but I consider reconcilable with what is said by Mr Solomon. Mr Allen says this:

> "… On arriving, before 11am, the IJ had already commenced the hearing and was part way through hearing submissions from the A's rep. IJ informed me there had been no cross-examination of the A by him. The IJ did challenge the A's rep on occasion when submissions made on risk on return. IJ informed PO he would not hear submissions from the HO."

14. I do not read either this or the Respondent's grounds as amounting to an assertion that any application was made by the Respondent to re-open evidence, to adjourn or make submissions. Given the Respondent's lack of challenge to the credibility of the Appellant's account, there could be no unfairness if the Judge had refused to allow further evidence to be taken. Nor would late attendance by the Presenting Officer be good reason why time should be given for him to prepare. I do not understand Mr Allen's evidence to be that any such application was made. However, I reject Mr Solomon's submission that it was incumbent on Mr Allen to apply to be heard. The hearing was still ongoing. Mr Allen was in attendance as representative of one of the parties. He was entitled to expect to be heard. There was no reason for him to apply for that privilege.

15. I am also concerned by what is said by Mr Solomon and consistently with the final sentence of Mr Allen's evidence, that the Judge did not hear from Mr Allen before deciding that he would not permit Mr Allen to make submissions. If the Judge intended to exclude the representative of a party from making submissions as would be the normally expected course, due to the lateness of attendance, I would have expected him to invite that representative to make submissions about why he should be entitled to be heard rather than reaching that decision with no regard to the circumstances or any submissions from that party's representative. I would also expect what occurred to be reflected in the Record of Proceedings and to be covered in the Decision so that the Judge's reasoning in excluding submissions could be taken

into account. The Judge should not have proceeded as if Mr Allen were not there at all when he evidently was.

16. I have some sympathy with Mr Solomon's submission that Mr Allen should have complained about the Judge's conduct at the time or immediately after the hearing. He may have taken the view that, since the Judge had already made up his mind, little was to be gained by saying anything and that there would be no purpose in complaining immediately after the hearing and before the outcome was known. However, although that might have enabled the Judge to reconsider his decision not to hear from Mr Allen, it does not prevent the point being taken at a later stage. It is in my experience, not uncommon for complaints about conduct not to be raised until an appeal is brought against the underlying decision.

17. What fairness requires depends on the facts of the case. I take into account in this case that the Respondent had not challenged the Appellant's credibility. As I have already indicated, therefore, it would not have been unfair for the Judge to refuse to allow the Respondent to test the evidence, the Appellant having already concluded the giving of that evidence. However, to shut out a party altogether on the basis that his representative arrived twenty minutes into a hearing has resulted in unfairness, particularly in light of the Judge's failure to hear from Mr Allen before deciding to exclude his submissions and the Judge's failure to give reasons for his decision.

Ground Two

18. I turn then to consider the consequences of the unfairness and whether it can be said to have made any difference. As I have already pointed out, the Respondent did not take issue with the credibility of the Appellant's claim. The fact that the Respondent was not permitted to cross-examine the Appellant or test her evidence could therefore make no difference. The only issue, as the Judge rightly observed, was whether the Appellant could internally relocate within Pakistan.

19. In reaching the conclusion that the Appellant could not relocate, the Judge has however made two errors which are or might be material to his conclusion. The first concerns the position of the Appellant's brother. At [25] of the Decision, the Judge records that the Appellant's older brother is a major in the Pakistan Army. As is recorded in the Respondent's decision at [39], based on the Appellant's own answers at interview ([AIR 89-92]), he was a major but resigned about six or seven years previously. Mr Solomon accepts that this is factually accurate.

20. That error then feeds into the Judge's conclusion about the likelihood of the Appellant being traced on return to Pakistan as follows:

> "[33] What was clear, was that if the Appellant returned to Pakistan, she would pass through immigration control which had biometric facilities. That would mean that her entry into the country would be documented and it was quite possible that her brother with his high ranking position, could find out if she re-entered the country, if he wanted to."

21. Mr Solomon suggested that this conclusion remained sustainable in spite of the error. He said that the Judge may have intended to say is that the Appellant's brother would continue to have contacts on which he could rely. I am quite unable to read the paragraph in that way. The Judge has clearly misunderstood the evidence about the Appellant's brother and this error has impacted on his finding that the brother would be able to find the Appellant due to his high-ranking position.

22. I do not accept the Respondent's suggestion that there is any error made at [35] of the Decision where the Judge says that the Appellant does not have a great deal of experience of work. The Respondent points to an entry clearance application which the Appellant made which shows that she was working in a tourist agency in Pakistan before her departure. However, Ms Jones accepted that this showed that she only worked there for a matter of months and the Judge was entitled to view that as being little experience.

23. I agree with Judge Lambert's comment about the basis on which the appeal is said to have been allowed "under paragraphs 336 and 339M/339F of HC 395". This is an appeal which post-dates the amendments made to the provisions of the 2002 Act by the Immigration Act 2014. The only appeal is against the refusal of the protection claim on the ground that removal in consequence of that refusal is in breach of the Refugee Convention. There is no longer a ground of appeal that the decision is not in accordance with the Rules. However, although I do not understand how the paragraphs of the Rules cited by the Judge are relevant to the Decision, nonetheless, any error makes no difference because it is clear that the Judge found that the Respondent's decision did breach the Refugee Convention because reliance could not be placed on internal relocation as an answer to the claim.

24. I do however have a further concern about the Decision at [38]. This arises from the Judge's conclusion about the basis on which the Appellant has been permitted to remain based on her family and private life. What the Judge says is this:

> "[38] I agreed with Mr Solomon's suggestion in his skeleton argument that the grant of leave based on family and/or private life in the UK was inconsistent with the assertion that the Appellant could internally relocate. It seemed to me that the grant of leave indicated that the Respondent had accepted that there are insurmountable obstacles to family life continuing outside the UK and/or that there would be very significant obstacles to the Appellant's integration into Pakistan if she were required to leave the UK."

25. Ms Jones attempted during the hearing before me to clarify the basis on which the Appellant was granted leave and accepted that the electronic system does not show why she was granted leave. However, as she pointed out, the decision letter does not say that this is because it is accepted that there are insurmountable obstacles to family life continuing in Pakistan. The letter suggests that the Appellant meets the eligibility requirements of Appendix FM which she could not do due to her immigration status unless paragraph EX.1 applies. However, there is no detailed consideration of the eligibility requirements and certainly no concession by the Respondent that EX.1 does apply. Equally, it is not clear that the grant is based on

the Appellant's private life other than there being an oblique reference to paragraph 276ADE.

26. The Judge's finding that this is the basis of the grant is speculation and unsupported by evidence; it might equally be an error on the caseworker's part or a failure properly to apply the relevant provisions. Of course, if the Judge had heard submissions from the Presenting Officer, he may have been able to clarify the position or obtain some concession that Mr Solomon's submission or the Judge's understanding was correct. However, there was no evidence that the Respondent had accepted the fact that the Judge found he had. That amounts also to an error of law.

**Conclusions**

27. For the above reasons, I am satisfied that the hearing before Judge Quinn was procedurally unfair to the Respondent. I am also satisfied that the Judge made at least two errors in his understanding of the evidence which are capable of affecting the outcome. In any event, since the error which I have found to exist is based on a lack of procedural fairness, it would be inappropriate to compound the unfairness by refusing to set aside the Decision and permit a re-hearing of the appeal.

28. I do not however consider it necessary to remit the appeal for re-hearing on this occasion. As I make clear above, the issue which has to be determined is a very narrow one. There is no issue taken with the credibility of the claim. The only issue for determination is whether, on the facts put forward by the Appellant, she is able to internally relocate safely and whether it would be unduly harsh to expect her to do so. There may need to be some limited evidence from the Appellant about what she says will occur and the reasons she cannot relocate which the Respondent may wish to examine. The Tribunal would also be assisted by knowing the basis on which the grant of leave to remain based on family or private life has been made as that may have some relevance to this issue. However, none of that prevents the decision being re-made in this Tribunal. The issues for determination do not involve an assessment of the Appellant's credibility or an extensive fact-finding exercise. Accordingly, I have given directions below for the re-hearing.

**DECISION**

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Quinn promulgated on 14 November 2018 is set aside. I give directions below for the re-hearing of the appeal**

**DIRECTIONS**

1. **Within 14 days from the date when this decision is promulgated, the Respondent shall file with the Tribunal and serve on the Appellant written submissions setting out the basis on which leave to remain has been granted on family and private life grounds or, if that is not evident from the file, that this is the position.**

**2. The appeal will be relisted for hearing on the first available date after 28 days from the date when this decision is promulgated: time estimate 1 ½ hours.**

Signed Dated: 8 February 2019
Upper Tribunal Judge Smith