Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08968/2019

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 28 August 2020	**On 28 September 2020**

Before

UPPER TRIBUNAL JUDGE REEDS

Between
N
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: The Appellant acting in person
For the Respondent: Ms Pettersen, Senior Presenting Officer

DECISION AND DIRECTIONS

1. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the appeal concerns a protection claim. Unless and until a court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly refer to her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

2. The Appellant with permission, appeals against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who, in a determination promulgated on the 15 November 2019, dismissed her protection and human rights claim.

The factual background:

3. The background to the appellant's protection claim is set out in the determination of the FtTJ at paragraphs 11-25 and in the decision letter of the Secretary of State issued on 30 August 2019.

4. The appellant is a national of Pakistan. The appellant is the youngest of 4 girls and has an elder brother. Her father is a successful businessman. The appellant's elder brother persuaded their father to let her come to the UK to study. The appellant's father is a conservative Muslim and uneducated. He has a very traditional attitude to women and was reluctant, but he eventually agreed because the appellant's brother and her elder sisters were in the UK with their husbands.

5. On 5 November 2011, the appellant entered the UK with entry clearance as a tier 4 student general student valid until 4 January 2014.

6. The appellant went to college and completed a level 3 access course. She stayed with A her eldest sister. In July 2014, the appellant started studying a Bsc which she completed in 2017. The appellant was supported by her elder brother, N.

7. On 14 October 2013, the appellant applied for further leave to remain in the UK as a tier 4 student. The Home Office refused the application and the appellant appealed. The appeal was allowed on 8 January 2015 and on 2h February 2015 the Home Office granted her leave to remain valid until 30 September 2017.

8. The Home Office subsequently granted the appellant further leave to remain in the UK on tier 5 visa valid until 8 October 2018.

9. Whilst studying in the UK, a paternal cousin suggested a potential suitor for the appellant's marriage. The appellant's elder sisters' marriages had been arranged and although the appellant was reluctant to marry, she felt she had no choice. Her family agreed that she could continue with her education.

10. On 13 October 2015 the appellant married B, a British citizen. However, within weeks the relationship was breaking down. The appellant's husband was abusive and hit her. He also tried to stop her from seeing her family in the UK.

11. On 8 December 2015, the appellant went to hospital after being assaulted by her husband. The two families pressurised her not to press charges against him as this was a family matter.

12. The appellant's husband filed for divorce and accused the appellant of committing adultery. The appellant last had contact with her former husband in April 2016 and the decree absolute was made on 12 September 2017. The couple divorced under Islamic law on 3 October 2017. The appellant thinks that her parents believe the adultery allegation and only had minimal contact with them.

13. In 2017 the appellant began working and she applied for further leave to remain and continued to work.

14. In late 2017 the appellant met Z in London. They met on a handful of occasions and in mid-2018 Z proposed. The Appellant said no and explained that she needed more time as she was still feeling the effects of her earlier traumatic marriage. The appellant has continued the relationship in secret. She only told her sister the day before the hearing.

15. On 4 October 2018, the appellant applied for leave to remain on the basis of family and private life in the UK.

16. On 5 March 2019, the Home Office refused the application with an out of country right of appeal.

17. On 6 March 2019, the appellant's brother contacted his father and advised him that the appellant is likely to return to Pakistan, as he understood that the Home Office had refused the application.

18. On 8 March 2019, the appellant received notification that the Home Office had refused the application. The appellant's manager terminated the appellant's employment but reassured her that the company would support an application for re-entry as a Tier 2 worker. The appellant decided to return to Pakistan for a few months and to apply for a visa. She began searching on- line for flights to Pakistan.

19. The appellant's brother contacted their father and told him that the appellant intended to return home to Pakistan. The appellant's father advised the appellant's brother that he had arranged for the appellant to marry one of his cousins. The appellant's brother told the appellant. She decided that she could not go back to Pakistan and on Monday morning she contacted the Home Office and claimed asylum. She returned and began living with her sister A again. She was supported by her siblings.

20. In June 2019, the appellant's father advised the appellant's siblings that the appellant needed to return to Pakistan and if they continued to support her, he will disinherit them. The appellant's eldest sister A opposed her father and has continued to support the appellant. However, the appellant's other siblings have disowned her and have had no further contact with her.

21. The appellant fears that if she is to be returned to Pakistan there is a real risk of her father forcing her to marry against her or killing her if she does not as he wishes.

22. On 14 March 2019, the appellant contacted the asylum intake unit and made a protection claim (asylum).

23. In a decision taken on the On 30 August 2019 the respondent refused the appellant's asylum and protection claim under paragraphs 336 & 339F of the Immigration Rules and also reached the decision that the appellant did not qualify for leave on the basis of her family or private life in the UK (hereinafter referred to as " the decision letter".

24. The FtTJ summarised the decision letter at paragraphs 26-32 as follows.

25. The Respondent accepted the appellant's identity and that she is a Pakistani national. However, the respondent did not accept that the appellant was a victim of domestic violence and that she had been accused of adultery. In addition, the respondent did not accept that the appellant's father threatened to her force her to re-marry if she returned to Pakistan. The respondent relied in part on section 8 of the Asylum & Immigration (Treatment of Claimants) Act 2004 (the 2004 Act).

26. In the alternative, the respondent concluded that the appellant could safely relocate to another part of Pakistan and that the Pakistani authorities could provide sufficient protection if required.

27. The respondent considered that the appellant had failed to demonstrate a reasonable degree of likelihood that she would be persecuted on return to Pakistan and concluded that the appellant would not be in need of international protection.

28. As to the appellant's human rights claim, the respondent noted that the appellant had not lived continuously in the UK for at least twenty years and did not accept that there were insurmountable obstacles to her integration into Pakistan. As such the Respondent was satisfied that the appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules.

29. Finally, the respondent concluded that the appellant had not raised any exceptional circumstances, which might justify a grant of leave to remain in the UK outside the requirements of the immigration rules.

The hearing before the FtT:

30. The appellant lodged grounds of appeal against that decision.

31. The appeal came before the First-tier Tribunal on the 17 October 2019. In a decision promulgated on 15 November 2019, the FtTJ dismissed her appeal. After considering the evidence, both documentary and oral, and analysing that he set out a summary of his conclusions at paragraphs 73 -86 as follows:

> "Conclusions
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> 73. In relation to the documents submitted, I have applied **Tanveer Ahmed v SSHD (Pakistan) [2002] UKIAT 00439**. It is for the Appellant to show that a document on which they seek to rely can be relied on (para 38-1) and "*a document should not be used in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing)*" (para 35).
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> 74. Overall, the Appellant's account is plausible and consistent with the background material. In addition, the information given to the GP is broadly consistent with the Appellant's account and the doctor has diagnosed that the Appellant is suffering from depression.
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> 75. On the totality of the evidence, I am satisfied that the Appellant's father arranged her former marriage. In this context I have attached significant

weight to the country material that demonstrates that arranged marriages are very common in Pakistan.

76. I am also satisfied that the Appellant suffered an incident of domestic violence during her marriage. Once again, the background material shows that Pakistani women are often victims of domestic violence and I attached significant weight to the report from the emergency department at the hospital.

77. However, notwithstanding the above positive aspects of the Appellant's case, I have reluctantly concluded, that the Appellant failed to discharge the lower standard of proof, in relation to the core aspects of her claim.

78. As I noted above the principal issue is whether the Appellant's father will force her to remarry if she returned to Pakistan and, a key part of this is that her father is strict, controlling and disapproved of her coming to the UK to study.

79. However, the difficulty for the Appellant is that in support of her appeal against the Respondent's decision to refuse to extend her leave to remain in the UK as a student, she stated that her parents were very upset that she was unable to complete her education in the UK. The clear implication is that they supported her studies in the UK, which is at odds with the Appellant's asylum claim. In my view, the Appellant is now providing a very different account of her upbringing and this has all the hallmarks of being an attempt to support a fabricated asylum claim. At the very least, the Appellant's failure to address this issue in her appeal statement, even though it was raised in the refusal letter, undermines her credibility generally.

80. I am also troubled by the absence of any supporting witnesses. I appreciate that an asylum seeker is not required to provide corroborative evidence. However, where, as in this case, the Appellant has provided inconsistent accounts and there is evidence, that should be readily available (witness A), then I am satisfied that I am entitled to draw an adverse inference from witness A's failure to attend the hearing. Especially as the Appellant's brother is also absent and the Appellant did not request an adjournment.

81. As to the other evidence, the divorce petition does show that the Appellant's former husband alleged that she had committed adultery. However, there is a lack of cogent or credible evidence demonstrating that anyone in Pakistan knows about the allegation.

82. In addition, even if I assume that the letter from the MP is genuine, the MP has not explained how he knew about the Appellant's claimed difficulties with her father, and, in my view, this undermines the weight I can attach to the contents of the letter.

83. Further, as was noted by the Respondent, the letter from the travel agency does not state that the Appellant did not purchase a ticket because of family problems. I appreciate that the letter is consistent with the Appellant's claim that she initially intended to return to Pakistan, but there could be many reasons why she decided to change her mind. For example, I note that the Appellant is now claiming that she has been in a relationship

with a man in the UK since 2018 and she confirmed at the hearing that she sees a future with him (paragraph 3 of her further appeal statement).

84. On the totality of the evidence, I have been driven to conclude that the Appellant has not given me a wholly truthful account of her relationship with her family, in particular her father. I am not satisfied that the Appellant's father intends to force the Appellant to marry a cousin, if she returned to Pakistan or that he (or anyone else in Pakistan) believes that she has committed adultery.

85. The Appellant has not satisfied me that she will be returning to Pakistan as a lone woman or that she has a genuine fear of returning to Pakistan.

86. Applying the lower standard of proof, the Appellant has not established that she will be at risk of being persecuted on return to Pakistan. Accordingly, I dismiss her asylum appeal.

32. The FtTJ also refused her Article 8 claim finding that there was no family life with her extended family (at [90]) and whilst she had established a private life, there were no very significant obstacles to her reintegration to Pakistan and that she had not demonstrated that there were any compelling circumstances which would justify her being granted leave outside of the Rules.

33. Permission to appeal that decision was sought and was granted on the 30 February 2020 by the FtT.

The hearing before the Upper Tribunal:

34. The hearing was listed on a date in May 2020. In the light of the COVID-19 pandemic Upper Tribunal (UTJ Jackson) issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing. However, following those directions it was considered that a face to face hearing should take place as the appellant was not represented. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

35. In compliance with the directions sent by the Upper Tribunal the appellant sent a reply to update the court as to a change in her circumstances exhibiting photographs of her wedding in November 2019 and copy of the Nikah, and subsequent marriage certificate and 1 page of copy passport of her spouse. On the 5 May 2020, the respondent set out her written submissions in a Rule 24 response. Following this a further reply was sent by the appellant making reference to her pregnancy.

36. The appeal was therefore listed as a face to face hearing with both the appellant and the Presenting Officer, Ms Pettersen present at court.

37. The appellant appeared in person and Ms Pettersen, senior presenting officer, appeared on behalf of the respondent. I am grateful for their assistance and their clear oral representations.

38. At the outset of the hearing I made enquiries with the appellant as to whether she required the court interpreter who had been directed to attend by the Tribunal. She

informed me that an interpreter was not necessary, and she made her representations in English. I note that during the hearing there were no difficulties with Ms N giving her representations, and no concerns were raised at any time during the hearing.

39. I reminded myself of paragraph 6 of the Surendran guidelines in that it is a judge's duty to give every assistance to an appellant who is not represented. To ensure that that duty was complied with, I ensured that at each stage of the proceedings I explained the procedure to her and ensured that she understood what was happening at each stage of the proceedings. Further I attempted to put the appellant at ease and told her that at any time of the proceedings if she wanted to ask a question or if she did not understand, then she must say so.

40. I also ensured that she had all the relevant documentation and she had brought with her a bundle of the previous documents before the FtT. It was identified that she did not have a copy with her of the grounds of appeal which she confirmed had been drafted by her previous Counsel and that she had seen them. A copy was therefore provided for her and time was given to her read the document and to refresh her memory as to its contents.

41. I shall summarise her oral representations to the Tribunal. In relation to grounds generally she confirmed that Counsel who appeared before the FtT had drafted the grounds of appeal. In relation to ground 1, she stated that at the last hearing during cross examination the judge had answered the presenting officer's questions and therefore there was nothing for her to say. She stated that she felt that if she replied to the presenting officer it would not be any different so when the judge replied to the presenting officer she thought that the judge had understood her case thoroughly.

42. In relation to ground 2, she confirmed that her sister's daughter had depression and had panic attacks and that she had shown the judge the appointment letter. She stated that it not been raised that there would be any problem with considering her evidence or else she would have asked for an adjournment. She stated that she had shown that her sister's child required medication and that a witness statement from A had said that it was hard for her to leave her daughter. She confirmed that Counsel did not apply for an adjournment. In respect of ground 3, she submitted that there was evidence from her employer stating that she was honest and that he would help her remain in the United Kingdom for employment. She stated that she had provided all the documents to the Home Office showing her career over a period of two years as an employee of x and that she had been a genuine student. Ms N explained that any application to renew her tier 2 status would have to be made from abroad and therefore the evidence from her employer supported her claim that she was going back to Pakistan but was not then able to because of the threats made by her father.

43. In relation to ground 4, she relied upon the written grounds. It was accepted by the FtTJ that the appellant's first marriage was arranged by her father and that she had difficulties during the marriage and that the judge also accepted that marriages between cousins were common (paragraph 36). Therefore, the finding made by the judge that it was not plausible that her father would arrange a second marriage was

inconsistent with his earlier findings. Similarly at paragraphs 11 – 12 of the grounds it was submitted that in reaching his assessment of the evidence at paragraph 66 the judge neglected to consider paragraph 7 of the witness statement where the appellant clarified her father's position regarding her education and that the judge had erred in law by failing to recognise that the appellant had summarised her subjective interpretation of her parents reaction and that the judge had given considerable weight to a sentence given which had not been properly scrutinised. In her oral statement she said that her father and paid £7000 for a course and that if she had not obtained a visa it would have been deducted. She said that she had given evidence in court that if she had studied in the UK and obtained her degree her father would have been proud of her and this was contrary to the finding made.

44. As to ground 5 in her oral submissions the appellant stated that whilst her ex-husband did not use the word "adultery" as soon as anyone would read the petition Pakistan they would know that this was alleged. The written grounds refer to the divorce petition stating that the appellant had "formed inappropriate relationships with another man" and that in light of the cultural objective evidence (expert evidence of Dr Bluth) that was sufficient to demonstrate a risk on return. Ground 6 asserts that the judge failed to apply the benefit of doubt rule in favour of the appellant.

45. As to ground 7 it was submitted that the judge erred in his approach to Article 8. Ms N submitted that there had been no assessment of the relationship between her family relatives' resident in the United Kingdom and she referred to her relationship with her elder sister and that she "called her mother". She described her relatives in the UK with whom she had relationships with. It was further stated that her relationship with her partner was also not considered by the judge although she had given evidence about him and it was referred to in her witness statement dated 17 October 2019. She conceded that there was no witness statement from him, but she stated that she had explained to the court that if one was required he was waiting in the car park. She said she tried to show photographs of her and her partner on her telephone which the presenting officer refused to see as he said it could have been anyone.

46. I heard oral submissions from Ms Petterson. As to ground 1, she submitted that it was hard to see how the appellant had been disadvantaged as the judge found in her favour on many of the evidential points. However she submitted the ground did not show any error of law and that if it had been said that Counsel had been prevented from making any submissions then this may have been an error but here it was stated that the presenting officer was restricted in questions. In any event she submitted the matters complained of were not set out in any witness statement.

47. As to ground 2, she submitted that it was not clear how crucial the evidence of the witness A was to the case and in terms of credibility there was contradictory evidence identified by the judge at paragraph 63 and the presence of a witness would not have been sufficient. Dealing with ground 3, there was no error of law in failing to take into account her employer's evidence. She submitted the judge was entitled to look at the evidence from the travel agency and was entitled to conclude that there

may be many reasons why she decided not to return to Pakistan and not just because of her claimed fear. As to the issue of the divorce petition, Ms Pettersen submitted that the appellant's husband had not divorced her on the grounds of adultery and the judge was entitled to conclude that some of the matters were contradictory. The fact that the content of the petition referred to her acting inappropriately with a man was not the same as having committed adultery.

48. As to ground 7 which related to the Article 8 assessment, the appellant was a student for a number of years and was also working. Whilst she had relatives in the UK this was not sufficient to establish family life even if they did live in the same household. Even if this had been considered as part of her private life there was nothing to suggest it would be disproportionate for the appellant to return to Pakistan and to retain her links with her family as before. Ms Pettersen accepted that the judge did not deal with the relationship between the appellant and her partner. She submitted the photographs on her phone would not provide any evidence of his identity and there was no documentary evidence of his identity or nationality before the judge. The judge was entitled to conclude that whatever the relationship it was insufficient to bring it within Article 8. There was limited evidence advanced on behalf of the appellant and even if the photographs were considered it did not get the appellant past the evidential threshold. Thus, she submitted the judge did not deal with it given the paucity of evidence. Ms Pettersen invited me to uphold the decision.

49. At the conclusion of the hearing I reserved my decision and explained to the appellant that I would give my decision in writing and that if I found an error of law in the decision of the FtTJ I would set out my reasons and the consequences of any legal error and also if did not find an error of law based on the issues raised I would also set out my reasons in a written decision.

Discussion:

50. I remind myself that I can only interfere with the decision of a FtTJ if it is demonstrated that the FtTJ made a decision which involved the making of an error on a point of law.

51. I have had the opportunity to read the written grounds, to hear the submissions from appellant in person and from Ms Pettersen on behalf of the respondent and have considered them in the light of the decision of the FtTJ.

52. Dealing with ground 1, the written grounds assert that the judge conducted the proceedings unfairly. It was said that during the course of the proceedings the presenting officer was challenged by the judge and it said that he was not being allowed to cross examine without constant interventions. It is asserted that the judge either scrutinised the line of questioning or responded on behalf of the appellant which meant that she was limited in elaborating on answers being asked. It is said that the conduct of the judge would appear to an impartial observer that he was acting outside his remit and not allowing the respondent or appellant to fully put forward their cases.

53. In her oral submissions, Ms N stated that at the hearing the presenting officer wanted to cross examine her but that the judge had answered him. She said she felt that if she replied it would not be any different and she thought the judge understood her case thoroughly. Ms Pettersen on behalf of the respondent submitted that the grounds did not show any error of law on the basis of how they had been drafted and on the basis of the appellant's oral submission that the presenting officer was restricted in asking questions. She submitted that if the account given by the appellant had been that she had been prevented from making submissions, such a point could be taken. In any event she stated the matters complained of were not raised in any witness statement.

54. I have given careful consideration to the written grounds and the oral submissions of Miss N. Having done so, I am not satisfied that that this ground is made out.

55. What is absent in relation to the evidence relied upon by the appellant in support of the allegation of unfairness, is anything from her Counsel in support of or to substantiate this claim. There is no witness statement from Counsel or any copy of a note or record of proceedings compiled and there is nothing from Counsel asserting any difficulty in properly representing the appellant or claiming the appellant did not receive a fair hearing before the Judge.

56. The appellant has stated that she has not provided a statement because she has not been able to afford representation. However, the appellant confirmed before me that Counsel had drafted the grounds where the allegation was made and therefore Counsel would have been able to provide the necessary statement setting out the evidence relied upon at that time.

57. There is also no witness statement from the appellant setting out her recollection. As a result of the lack of evidence, there is no evidential foundation upon which the FtTJ could be asked to comment.

58. It cannot be in dispute that as a general principle any person appearing before a court or Tribunal has a right to a fair hearing. However, a FtTJ is entitled to choose how to conduct their hearing, even if this involved asking questions as a form of clarification from either of the advocates. As a lay witness who may not have any experience of court hearings, it may not be readily understood why a judge may ask questions of the parties. Therefore, even if it were right that the judge asked questions of the presenting officer, I note that it is not the appellant's position that her Counsel was stopped from re-examining before proceeding to submissions. The appellant had the benefit of Counsel representing her and I am satisfied that it is clear that Counsel instructed was able to engage fully with the appeal process by being able to examine and re-examine as required, and to make submissions on the appellant's behalf.

59. I remind myself that the burden of proving the allegation of unfairness falls upon he appellant. The FtTJ made a number of positive findings in relation to the appellant's claim and it is not the case that he rejected the appellant's claim in its entirety. Having undertaken a careful examination of the decision and the issues raised in the

grounds of appeal, evidence, and submissions made, whilst the appellant was not satisfied with the outcome of the appeal, the appellant has failed to establish that she did not receive a fair hearing as asserted in Ground 1.

60. However, dealing with ground 2, I am satisfied that this ground is made out. It relates to the evidence of the appellant's sister, A. She had provided two witness statements which supported the appellant's account in material aspects. The second witness statement (p111AB; paragraph 4) gave first- hand evidence of the threats made by the appellant's father concerning a forced marriage and was consistent with and provided potentially corroborative evidence for the witness statement of the appellant's brother.

61. Whilst the appellant's brother had filed a witness statement he did not attend the hearing. The reason for his non-attendance was set out at [67] that the appellant's father had threatened to disinherit her siblings if they continued to support the appellant and it was only her sister who was prepared to stand against this. As to the circumstances of the appellant's sister, it was evident that she had intended to give evidence before the FtTJ but it was said that her daughter had a panic attack the night before the hearing and that when her mother had contacted the GP she was advised to take her to hospital. The position before the Tribunal was that as a result, the appellant's sister did not attend the hearing. The judge stated that Counsel had not referred to any medical evidence in respect of her child's health but noted that there was some evidence in support as she had referred to her daughter's health issues in her witness statement (at [68]). The judge also observed that he was surprised that the appellant did not ask for an adjournment for her sister to attend or for a later hearing.

62. It does not appear that any further consideration was given to the position of the supporting witnesses or the importance of A's absence. I asked Ms N during the hearing whether an application was made for an adjournment. She told me that Counsel had not made an application formally before the judge because a witness statement had been provided. As I understand her summary before me, this was subject to anything the judge might say about the statement.

63. In the absence of evidence from Counsel or any reference in the record proceedings, it is unclear to me what view was taken as to the necessity of an adjournment for the witness to attend or what, if any, discussions ensued. However, what is clear is that the FtTJ made a number of important findings based on the non-attendance of the witness. At [69] the FtTJ stated that in the absence of the appellant's siblings, the presenting officer was unable to test the content of the statements and therefore this lessened the weight that he could attach to the evidence. At [72] he referred to a point in the evidence and that due to her failure attend she had not explained the omission. At [68] he expressed the view that in the appellant's brother's absence, A's evidence became "highly significant". Furthermore at [80] the FtTJ set out that he was "troubled by the absence of any supporting witnesses" and whilst noting that corroboration was not required he stated that where there was evidence that was readily available "I am satisfied I am entitled to draw an adverse inference from A's

failure to attend the hearing. Especially as the appellant's brother is also absent and the appellant did not request an adjournment."

64. Against that background it is submitted on behalf of the appellant that had the judge indicated that he would draw an adverse inference by the witnesses absence or found the absence to prejudice the appellant's case then the position of an adjournment would likely to have been reconsidered. The grounds going to say that the appellant was not given the opportunity to reconsider the position of an adjournment or to fully appreciate the consequences of her witness not being present.

65. Ms Pettersen on behalf of the respondent did not make any submissions as to this aspect of the grounds but submitted that it was unclear how crucial the evidence of A was and there was contradictory evidence within the witness statements in any event as to what the parties knew or didn't know concerning the allegations made of adultery.

66. Having considered the position of the parties, it is plain in my judgement that the evidence of A was considered by the judge to be highly significant evidence as he stated at [68]. It is also plain that the judge was troubled by the witness's absence. Consequently, notwithstanding the submission made by Ms Pettersen, the judge did consider that this evidence was of importance and did form part of the factual matrix.

67. Furthermore, in light of the positive credibility findings made in favour of the appellant relevant to her factual account, that evidence had clear significance.

68. I have considered with care whether there was any duty on the judge to raise the issue as the grounds submit. The relevant Procedure Rules set out the Tribunal's wide case management powers and in particular Rule 4. Rule 4 (3) provides that the Tribunal can decide on the form of a hearing and the Rules also provide for particular matters to be dealt with as a preliminary issue. Rule 4 (3) (g) provides the power to adjourn or postpone the hearing. This must be exercised in accordance with the overriding objective and having regard to other relevant considerations. The decision in Nwaige (adjournment: fairness) [2014] UKUT 00412 emphasises the importance of the test of fairness and whether the party will be deprived of a fair hearing.

69. I have not found this an easy issue to determine as I have no indication from the record of proceedings as to any discussions between the parties nor do I have any statement from Counsel concerning the procedural aspects. It seems that no application for an adjournment was made and there is no general duty on a judge to put a party on notice of any particular credibility issue. However, in the light of the potential significance of the evidence and in the context of there being some evidence in support of the witnesses non-attendance, it seems to me that in terms of fairness that should have been some discussion as to how that evidence may be viewed. Whilst the Tribunal has the power to admit and consider hearsay evidence, the weight of the evidence will be an issue to be determined having regard to its contents

and the ability to test the evidence. Here the FtTJ went on to draw an adverse inference based on the witness's non-attendance when there was a reason given as to why she had not attended with some evidence in support. In the light of the careful positive findings of credibility that were made by the FtTJ, that evidence did have potential significance for the appellant's claim. When applying for permission to appeal, the appellant provided a letter/witness statement from her sister dated 26 November 2019 attesting to why she had not attended the hearing as a result of her daughter who she stated had mental health problems, who had had a panic attack in the morning and that she had to make an emergency appointment as her condition was serious. She stated that she understood the importance of her being at the hearing and would do her utmost to be there at any further hearing. Whilst that statement was not before the FtTJ, it provides some support for the reasons as to why she had not attended the hearing and reflects back on the position before the judge. I am therefore persuaded that there was a procedural irregularity which went to the fairness of the proceedings and therefore had the effect of undermining the overall credibility assessment. The evidence was historically relevant to the risk of harm and return and it is sufficient in my view to result in the setting aside of the decision. Consequently, I need not address the other grounds which are advanced in relation to the protection claim.

70. As to the Article 8 claim, ground 7 submits that the judge erred in his approach to Article 8 and that the assessment proceeded solely on the appellant's private life claim. The grounds submit that the judge did not assess the nature of the family life between the appellant, her sister and other family relatives with whom she lived with since her arrival in the UK which had been supported by the written and the photographic evidence. It is also submitted that the appellant had said she was in a relationship with her partner since late 2017 and that she was unable to fully disclose the depth of relationship as her brother had conduct of the case initially which is why he was not referred to in her application and that he was now her husband having married on 24 November 2019. It is also asserted the judge refused to view photographic evidence on the phone in relation to her partner which would have added to her credibility and her claim on Article 8 grounds.

71. In her summary to the Tribunal, Ms N submitted that she had a very close relationship with her eldest sister who she referred to as her "mother" and whilst her sister entered the UK in 2000, the appellant had been visiting the UK frequently. She said that she had established a family life with them that no consideration be given to that in the judge's decision.

72. Ms Pettersen on behalf of the respondent submitted that the chronology of the appellant's life in the UK referred to her living apart from her sister in a different geographical location for a number of years. She submitted that even if they had been in the same household this would not be sufficient to found a family life nor would it be considered to be disproportionate as on return appellant could retain family links as before.

73. When looking at the decision it is plain that the judge considered the appellant's Article 8 claim on the basis of her private life only. The appellant's claim to have a

family life with her relatives in the UK was raised before the respondent in the evidence provided for her application for leave to remain on family and private life grounds. In the decision letter her family life was considered under "exceptional circumstances" and at paragraph 130 – 132 it was noted that she had submitted a number of witness statements and that she had established a close relationships but that "you have not demonstrated upon your return to Pakistan that they are not able to visit you and continue these relationships." It appears from the decision letter that the respondent proceeded on the basis of an acceptance of the establishment of family life. However, at [90] the judge found that because the appellant had not been wholly totally truthful about her relationship with her family and that because A did not attend the hearing, he was not satisfied that she had family life in the UK. Therefore, I am satisfied that the judge did not fully consider the basis upon which family life had been advanced.

74. As the relationship between the appellant and her partner as the grant of permission sets out, the record of proceedings refers to "claimed relationship; relationship is to be relied upon for the purposes of Article 8. The respondent gives consent for the Tribunal to determine this issue."

75. It is common ground that the relationship was only disclosed at a very late stage as indicated in the appellant's witness statement. This would have been a "new matter" and could only have been considered by the FtTJ if the respondent gave consent. It appears that consent was given as indicated in the record of proceedings. Evidence was given during the hearing concerning the relationship between the appellant and her partner as to when they met and that they had kept their relationship secret. That was set out in witness statement at paragraph 3 (dated 17th of October 2019). At paragraph 20 of the decision the judge set out that evidence and at paragraph 83 referred to the relationship she had with a partner and that she "saw a future with him".

76. Ms Pettersen accepted that the FtTJ did not deal with Article 8 on the basis of a relationship with her partner but submitted that it was not material given the paucity of the evidence. She submitted the claim was made late in the day and there was limited evidence available. The photographs on the appellant's mobile phone would give no evidence of his identity and thus the evidential threshold was not made out.

77. Having looked at the evidence, it is plain to me that the issue of the appellant's relationship was indeed a live issue as demonstrated by the respondent's agreement for the judge to consider it as a "new matter" combined with the evidence in the witness statement and the oral evidence given by the appellant. It is also clear that whilst relationship was relied upon no factual assessment was made of any kind. That said, it is right as Ms Pettersen submits that there was little evidence before the judge in the light of the relationship having been disclosed at a late stage and there was no witness statement from him. Whilst Ms N submits there was photographic evidence on her mobile phone, I do not accept that any such photographic evidence would have assisted the judge in any Article 8 assessment. Ms N description of the photographs were of her and her partner. I would accept that it is unlikely that she would pose with a man who was not her partner however, the photographic

evidence would not be evidence of either his nationality, his status or evidence the nature of the relationship or the circumstances relevant to any assessment of the nature of that relationship. Nor do I accept that as he was waiting in the car park adjacent to the court, the judge should have summonsed him. There was no witness statement for him and in the interest of fairness the respondent would be entitled to have notice of any evidence given.

78. In summary, whilst the judge was in error by failing to consider a material matter relating to the Article 8 assessment (her relationship), as it was clearly an issue that had been raised, given the lack of evidence it is difficult to see how he could have reached any decision upon that relationship. However, for the reasons set out above I am satisfied that the judge did not consider family life with her family relatives which is sufficient to demonstrate a material error of law in relation to the Article 8 assessment.

79. Since the hearing Ms N has provided further evidence that was not available to the FtTJ which demonstrates shortly after the hearing in November 2019 the appellant and her partner were married in an Islamic ceremony followed by a civil ceremony in 2020. The appellant has provided evidence also of her pregnancy. There is some evidence from her spouse and from her sister (relevant to the issue of family life) None of that evidence was before the FtTJ and is fresh evidence of events that occurred after the hearing and as such cannot demonstrate that the FtTJ made a material error of law. However, in the light of my assessment that ground 2 is made out which has the effect of undermining the assessment of the credibility of her claim, I have reached the conclusion that the decision should be set aside and this will also include the Article 8 assessment.

80. As to the remaking of the decision, it will be remade on the evidence as at the date of the hearing which will include both protection claim and the Article 8 claim. Accordingly, it will be necessary to take account of the fresh evidence relating to her marriage and thus will require further oral evidence to be given as to her present circumstances.

81. I have therefore considered whether it should be remade in the Upper Tribunal or remitted to the FtT for a further hearing. In reaching that decision I have given careful consideration to the Joint Practice Statement of the First-tier Tribunal and Upper Tribunal concerning the disposal of appeals in this Tribunal.

> "[7.2] The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:-
>
> (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
>
> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having

regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

82. As it will be necessary for the appellant, A and her spouse to give evidence and to deal with the evidential issues, further fact-finding will be necessary and in my judgement the best course and consistent with the overriding objective is for it to be remitted to the FtT for a further hearing. The Tribunal will be seized of the task of undertaking a credibility assessment and an assessment of any Article 8 claim and will be required to do so on the basis of the evidence as at the date of the hearing.

83. The circumstances of the appellant have significantly changed given her marriage. However, given the positive findings made at paragraphs 34 – 46 they should be preserved findings at any future hearing.

84. I am satisfied that the decision of the FtTJ demonstrates the making of an error on a point of law to justify the setting aside of the decision.

Notice of Decision

85. The appellant's appeal is allowed on the basis that the decision of the FtTJ did involve the making of an error on a point of law; the decision is set aside and remitted to the First-tier Tribunal for a fresh hearing.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

Signed Date 22/ 9/2020

Upper Tribunal Judge Reeds