IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001685

First-tier Tribunal No: HU/51326/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 June 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

A
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Broachwalla instructed by Sunrise Solicitors.
For the Respondent: Mr McVeety, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 19 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and his partner, Ms N are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. In a decision promulgated on 22 February 2023 Upper Tribunal Judge Lane set aside the decision of the First-tier Tribunal in this appeal and gave directions for the future management of the case to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal. The appeal comes before me for the purposes of that hearing following the making of a judicial transfer order.
2. Judge Lane directed that the First-tier Tribunal finding that the appellant could not satisfy the immigration rules and in particular the finding that (i) there would not be very significant obstacles to the appellant's integration into

Pakistan were he required to leave the United Kingdom, (ii) that any significant difficulties the couple may face upon return to Pakistan can be overcome and that they would not entail very serious hardship for the appellant or Ms N [43] and, (iii) there are no insurmountable obstacles to family life of the appellant and his partner continuing outside the United Kingdom [44], shall be preserved findings.

3. A preliminary issue arose in relation to the very late filing of the bundles relied upon by the appellant in this appeal. Judge Lane directed that the parties may adduce new evidence provided such evidence was sent to the Upper Tribunal and the other party no less then 10 days prior to the resumed hearing. The bundles were in fact received the day before. Mr McVeety confirmed he had no objection to the evidence in the bundles being admitted, albeit they are substantially out of time.
4. No oral evidence was called, and the matter proceeded by way of submissions only.

Discussion and analysis.

5. The appellant's immigration history taken from the First-tier Tribunal decision, which is not contested, reads as follows:

6. The appellant entered the UK as a student having secured in advance a student visa running from 24th July 2006 to the 30th November 2009. On the 30th November 2009 the appellant applied for Leave to Remain (LTR) as a Tier 4 General Student and this application was rejected as invalid on the 30th December 2009. On the 11th January 2010 the appellant applied for LTR as a Tier 4 General Student which was granted on the 22nd June 2010.This visa being valid to 17th March 2011 with a condition restricting employment. On the 17th March 2011 the appellant applied for LTR as a Tier 4 General Student which was granted on the 19th April 2011 and was valid to the 28th June 2013. However, on the 2nd April 2012 the appellant's LTR as a Tier 4 General Student was curtailed to expire on the 1st June 2012 with No Right of Appeal (NROA).
7. On the 27th June 2013 the appellant applied for LTR as a Tier 4 General Student. On the 22nd July 2013 the appellant was granted a visa which was valid until the 8th April 2015. However, on the 27th November 2013 the appellant was encountered working illegally on an enforcement visa and served with notice of liability to removal, forbidden from employment and also subject to a reporting restriction. On the 24th April 2014 the appellant applied for LTR on the basis of a private life in the UK which was refused on the 19th May 2014. On the 8 th May 2014 the appellant was encountered working illegally. On the 2 HU/51326/2021 16th June 2014 the appellant requested reconsideration of the refusal decision and on the 19th August 2014 the reconsideration request was rejected.
8. On the 9th December 2014 the appellant submitted a Pre-Action Protocol (PAP) letter against the refusal decision dated the 19th May 2014. On the 5th January 2015 the PAP response was concluded and the refusal decision was maintained. On the 22nd April 2015 the appellant was served with RED.0001 notice as an illegal overstay subject to removal. On the 15th May 2015 the appellant applied for LTR under the Human Rights Act Article 8 which was refused on the 18th May 2015. On the 20th July 2015 the appellant submitted a PAP letter against the refusal decision of 18th May 2015. On the 30th July 2015 the PAP response was concluded and the refusal decision maintained.
9. On the 18th August 2015 the appellant submitted an application for Judicial Review (JR). The permission was refused by Upper tribunal Judge Eshun in an order dated 28th October 2015. On the 10th December 2015 the appellant submitted further submissions which were rejected under Paragraph 353 on the 17th February 2016. On the 27th September 2017 the appellant applied for LTR under the Family/Private Life 10-year route to settlement which was rejected as invalid on the 8th January 2018.On the 6th April 2018 the appellant applied for LTR outside the Immigration

Rules which was rejected as invalid on the 3rd August 2018.On the 13th July 2020 the appellant applied for LTR as an unmarried partner which was rejected by the respondent in the reasons for refusal letter dated 14th April 2021.

6. The core of the appellants claim advanced before the First-tier Tribunal is that he first met Ms N in March 2018 through one of the couple's mutual friends. The couple became close and the appellant moved in to live with Ms N shortly thereafter. They have been living together since. Ms N was diagnosed with a Poliomyelitis infection when she was 3 months old as a consequence of which her right leg is shorter than her left leg and she experiences weakness in her right side. Ms N requires assistance with her day-to-day care and the appellant has cared for her in recent years. Ms N has also been diagnosed with low mood. The appellant and Ms N intend to start a family and are in the very early stages of the IVF process. Ms N was married for a short period of time and claims that the marriage broke down because of the domestic violence which her husband subjected her to. She and the appellant are content to remain living together at the present time and currently have no plans to marry. Ms N is in receipt of the Personal Independence Payment Allowance (PIP). She and the appellant maintain that the only viable option from both a practical and financial point of view is for the appellant and Ms N to remain living together in the UK. The appellant claims that this is because as an unqualified man he would be unlikely to secure lucrative employment upon return to Pakistan which would generate sufficient income to fund a further application for entry clearance to re-join Ms N in the UK. Consequently, it would take years for him to generate funds to reapply for entry clearance. Such delay would inevitably impact upon the couple's ability to engage with any IVF programme currently available to them via the NHS. Secondly, the appellant claims that were he to return to Pakistan to make an application for entry clearance his partner Ms N would lose her personal carer which is the appellant. The couple also claim that they are unable to relocate to Pakistan as a couple because as an unmarried couple they would be ostracised by any family members who remain in Pakistan and would be unable to establish themselves anywhere in Pakistan because they would be an unmarried couple living together in Pakistan. Consequently, the appellant and Ms N would be unable to rely on family support in Pakistan and without employment in a well-paid job the appellant is unlikely to be in a position to be able to fund Ms N's care in Pakistan.
7. Judge Lane in his error of law decision considered whether he should remake the decision and dismiss the appeal, but did not, on the basis the appellant should be given the opportunity to make further submissions.
8. On behalf of the appellant Mr Broachwalla submitted he was not trying to reargue the factors taken into account in the Article 8 assessment previously, but stated there was a lot of evidence regarding Zina and the relationship between the appellant and Ms N which was relevant in Pakistan and relevant to the Article 8 assessment.
9. In his skeleton argument Mr Broachwalla wrote:

- There are cultural barriers for the Appellant and his partner in Pakistan, which will amount to insurmountable obstacles. The Appellant and his partner are an unmarried couple, which would be seen as adultery in Pakistan and thus, a criminal offence in the country- the 'Country Policy and Information Note Pakistan: Women fearing genderbased violence, Version 4.0, February 2020' states:

"c) Adultery, extra-marital relations and divorce

2.4.8 Adultery and sexual relations outside of marriage are criminal offences under the law. Adultery is punishable by imprisonment for up to five

years and a fine not exceeding 10,000 Rupees. An accusation of adultery must be lodged directly with the court. However no recent statistics or legal precedent of convictions could be found in the sources consulted (see Bibliography). 'Honour' crimes, including murder, are sometimes committed against women accused of sexual infidelity or indiscretion, where the perpetrators seek to avenge the dishonour brought upon the family. A mere allegation or suspicion of sexual misconduct can be enough to perpetrate such an honour crime (see Adultery and extra-marital relations and 'Honour' crimes). .....

2.4.12 Persons who may face prosecution on return to Pakistan would include women accused of adultery or having sexual relations outside of marriage (see Adultery and extra-marital relations). .....

2.4.15 A woman may also be subject to family / societal discrimination and ill treatment for bringing dishonour to her family. The intent, nature and likelihood of the threat will depend on the woman's circumstances and the facts of the case. .....

5. Adultery and extra-marital relations

5.1 Legal context

5.1.1 The offence of zina defines 'adultery' and is covered under the Offence of Zina (Enforcement of Hudood) Ordinance, 1979, which states 'A man and a woman are said to commit "Zina" if they wilfully have sexual intercourse without being married to each other.' Zina is liable to hadd (the punishment decreed by the Quran): stoning to death, or 100 lashes. The Hudood laws apply to both Muslims and non-Muslims, although the punishments differ. According to Khan and Piracha, a consultancy firm in Islamabad, writing in April 2015, '… no statistics are available for charges/convictions for simple zina (adultery) nor have we been able to find any legal precedent for a conviction on this charge.'

5.1.2 Sexual relations between parties who are unmarried is considered 'fornication' and is deemed an offence under the Protection of Women (Criminal Law Amendment) 2006 Act. This offence is punishable by imprisonment for up to 5 years and a fine not exceeding 10,000 Rupees. An accusation of adultery must be lodged directly with the court. It is considered an offence to make false accusations of adultery and fornication. .....

5.2.1 As sexual relations outside of marriage is strictly prohibited under the 1979 Hudood Ordinances101, having a child outside of marriage causes huge social stigma. Deutsche Welle noted in a report dated 22 April 2014 that, 'In Pakistan, abortion is illegal, and so is adultery - creating a situation where hundreds of children born out of wedlock are secretly killed each year. Their bodies are, literally, thrown out with the garbage.'102 Illegitimate children were referred to as 'harami', meaning 'forbidden under Islam' 103. They did not have rights of inheritance."

- Additionally, the CPIN notes that women in Pakistan are discriminated against. The partner's disability and being involved in an unmarried relationship would increase her risk of being discriminated against given that she would be seen as someone who has transgressed social norms:

"1.2.1 Gender-based violence includes, but is not limited to, domestic abuse, sexual violence including rape, 'honour crimes', and women accused of committing adultery or having premarital relations. .....

2.4.2 The World Economic Forum's Global Gender Gap Index ranked Pakistan as the second worst country in the world (and the lowest in South Asia) in 2016, 2017 and

2018 in terms of gender equality relating to economic participation and opportunity, educational attainment, health and survival and political empowerment. In terms of discrimination and the risks women face from cultural, religious and traditional practices, including so-called honour killings, Pakistan is ranked the sixth most dangerous country in the world for women (see Social, economic and political rights and attitudes)."

10. This is not a new matter as at [41] the First-tier Tribunal Judge rejected the argument the appellant and Ms N could not return together to Pakistan. At [2] of the error of law finding Judge Lane wrote:

> 2. The decision of the First-tier Tribunal judge is clear in finding that the appellant and Ms N can continue their family life in Pakistan. At [41] the judge dismissed the argument that they could not return together to Pakistan because they are unmarried:
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> The appellant and Ms N have explained that as an unmarried couple they would not be able to live together in Pakistan. They would in other words be ostracised. Neither of them was able to provide a satisfactory explanation as to why they had no immediate plans to marry other than they did not feel ready. It is possible that Ms N is reluctant to marry because she was subjected to domestic violence in her first marriage. However, neither she or the appellant cited these circumstances as a reason why they have chosen not to marry. The couple are currently embarking upon IVF treatment in the UK and there is an argument for saying that if the couple are committed to one another to the extent that they are prepared to bring a child into the world then it would seem logical and reasonable that they are prepared formally to commit to one another in marriage.
>
> The judge went on to find at [42]:
>
> In the event that they did marry prior to returning to Pakistan, there would be a home and financial and practical help available to them in Pakistan by virtue of the fact that they were a married couple as opposed to an unmarried couple. The alternative would be for the appellant to return to Pakistan and make the necessary application for entry clearance to re-join Ms N in the UK. The appellant would need to generate funds of several thousand pounds just to actually issue a fresh application for entry clearance.
>
> The judge then briefly considers the difficulties the appellant might encounter raising the funds in Pakistan to make an application to return to the United Kingdom as Ms N's partner but concludes that, assuming he could pay the fee, the appellant would be likely to comply with the financial requirements of Appendix FM-SE of the Immigration Rules by having the benefit of Ms N's benefit income. Ultimately, the judge concluded at [43]: 'I am satisfied that any significant difficulties the couple may face upon return to Pakistan can be overcome and that they would not entail very serious hardship for the appellant or Ms N.'

11. That aspect of the appellant's claim was factored into the assessment of whether there were insurmountable obstacles to family life continuing outside the UK. If the reason the appellant claims he and Ms N cannot return is because of their status as an unmarried couple, the simple solution is that they can get married. There was nothing to suggest they could not do so other than by choice at this time.
12. There is no challenge to finding of the First-tier Tribunal Judge that the appellant has maintained his links with family members in Pakistan and that the appellant and Ms N will be able to enter Pakistan legally as they both originate from Pakistan, have family links with relatives in Pakistan, and can speak Punjabi and Urdu as well as English.

13. I find that this is an attempt to reargue a point which has already been determined in the absence of fresh evidence that would warrant this issue being considered further.
14. Mr Broachwalla further submitted that Ms N suffers from polio in relation to which there is a lack of medical treatment available in Pakistan and that she also suffers from depression.
15. The First-tier Tribunal Judge referred to the medical aspects from [36]. It was noted that Ms N lived in Pakistan until she was 21 years of age and that having contracted poliomyelitis at a very early age that she and her family were able to cope with her condition into adult hood. The First-tier Tribunal Judge noted Ms N has siblings who reside in Pakistan who could assist with some personal care in the event the appellant secured employment and that the medical evidence did not indicate that her physical and mental health would significantly decline upon return. The First-tier Tribunal Judge accepted that relocation to Pakistan may be difficult but again factored this element into the assessment of whether insurmountable obstacles or any other matters relating to the presentation of the appellant and Ms N would make return to Pakistan unreasonable or disproportionate on family life grounds.
16. It was further submitted the appellant's behalf that he had been in the United Kingdom for 17 years and that if he has to leave the UK there will be an increased burden upon the NHS due to Ms N's needs which it was claimed she would not have the funds to pay for.
17. It is for the Secretary of State to decide public policy issues and whether the effectiveness of immigration control outweighs other public spending issues in circumstances such as these, as represented in the refusal. It is not disputed that if the appellant is removed and Ms N has care needs that are not met they will have to be met from either the NHS or Social Service network in the UK. It was not made out, however, such services will not be available. I have read the evidence provided by way of a PIP letter and GPs letter but there has been no 'needs assessment' of Ms N that has been disclosed in the bundle to show that if the appellant leaves the UK what Ms N's remaining care needs will be and what is required for them to be met. The Social Care system in the UK provides local authority support for those in need or provides an allowance to enable the person requiring care to purchase such services for themselves. There is insufficient evidence to show that if the appellant is removed from the UK Ms N's care needs will not be met.
18. In relation to the argument that as Ms N suffers from depression it would be unreasonable for the appellant to return due to the time it would take to make an application and the question posed by Mr Broachwalla as to who would provide care in the interim without being a burden upon the NHS, that question is answered in [17] above. It is also important to note the primary finding of the First-tier Tribunal is that the family life between the appellant and Ms N can continue in Pakistan. There is therefore no need for them to become separated. They can live together in Pakistan.
19. In relation to the time taken to make an application to return lawfully, his claim that the period of time he will be out of the UK will make his removal disproportionate is speculative and no more. It was not made out that the appellant will be unable to secure work or that funds could not be arranged, with the support of family if necessary, to make a further application. There was insufficient evidence to show that the delay in making and processing such an application is sufficient to make the decision disproportionate.
20. Relation to the IVF issue, in R (on the application of Erimako) v SSHD [2008] EWHC Civ 312 Burnton J said that it was not disproportionate to remove the Appellant, whose wife her in 40's had leave to remain, when they were

undergoing fertility treatment here that would not be as effective in his home country, particularly in this case where the prospects were at best uncertain. It was not made out before me that there is anything in relation to the evidence of IVF that would warrant a different conclusion in this case on the facts.

21. It was accepted before me by Mr Broachwalla that the public interest has great weight but argued that the factors above, and the appellant circumstances as a whole, make the decision disproportionate.
22. It is important to remember why this matter proceeded as it did following the error of law finding. It is limited to a further consideration of Article 8 ECHR outside the Immigration Rules, as the appellant cannot satisfy the Rules. The preserved findings are determinative of the appeal on family life grounds, as if there are no insurmountable obstacles to family life continuing outside the UK there will be no breach of that protected right. It is accepted the appellant has formed a private life in the UK as it is accepted the appellant has been in the UK for 17 years. That fact is not disputed.
23. It is important to consider section 117B(4)(a) and (b) of the Nationality, Immigration Asylum Act 2002 and section 117B(5). The appellant's immigration history shows his status in the UK has always been precarious. Although he entered the UK lawfully as a student with a visa which was extended, he was encountered working illegally on an enforcement visit on more than one occasion and was served with RED.0001 as an illegal overstayer subject to removal on 22 April 2015. During the time the private life has been developed the appellant's status has therefore been both precarious and unlawful. During the times the family life he relies upon has been developed his stay has been illegal. I find there is nothing to warrant anything other than little weight being given to the private life being relied upon in light of this fact and the lack of evidence of a depth or quality of any private life sufficient to outweigh strong public interest in this appeal.
24. It is settled law that Article 8 does not give a person the right to choose where they wish to live. The appellant has family in Pakistan.
25. For the appellant to succeed, in light of preserved findings, he would need to establish something above the finding of no insurmountable obstacles or the impact of section 117 of the 2002 Act. Having reviewed this matter, I find there is nothing in the evidence to show that this high threshold has been crossed let alone reached. I find there is insufficient evidence to show that the acknowledged public interest is outweighed on the facts of this appeal. The appellant's claim that he does not want to leave is not sufficient.

Notice of Decision

26. The appeal is dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

2 June 2023