IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002488

First-tier Tribunal No: HU/50190/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6 June 2023

Before

UPPER TRIBUNAL JUDGE BLUNDELL
and
DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

WAHEED FAROOQ
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Youssefian, instructed by Nasim & Co Solicitors
For the Respondent: Ms Ahmed, Senior Presenting Officer

Heard at Field House on 9 May 2023

DECISION AND REASONS

1. On 9 March 2023, we issued our first decision in this appeal. We found that the judge in the First-tier Tribunal (Judge Murshed) had erred in law in allowing the appellant's appeal against the respondent's refusal of his human rights claim. We set aside the FtT's decision in part and directed that the decision on the appeal would be remade in the Upper Tribunal following a further hearing.

2. The further hearing took place before us on 9 May 2023. We remake the decision on the appellant's appeal by dismissing it for the following reasons.

Background

3. The appellant is a Pakistani national who was born on 10 November 1992. He is therefore 30 years old at present. He entered the United Kingdom in May 2012. He had been granted entry clearance to accompany his mother, who was coming to this country in order to join his father. The appellant's entry clearance was valid from 4 March 2012 to 4 June 2014.

4. The appellant sought further leave to remain on 4 June 2014, but that application was refused on 21 October of the same year. He appealed against that decision, but his appeal was dismissed by the First-tier Tribunal (Judges Froom and Isaacs) on 3 September 2015 and applications for permission to appeal to the Upper Tribunal were refused at first instance and on renewal. The appellant's appeal rights were duly exhausted on 19 October 2015.

5. The appellant then made five applications under the Immigration (European Economic Area) Regulations 2006 and 2016. Those applications were refused in March 2016, June 2017, December 2017, June 2018 and 13 January 2020. The penultimate of those decisions was the subject of another appeal to the First-tier Tribunal. The appeal was dismissed and the appellant did not appeal against the decision.

6. On 11 May 2020, the appellant made an application for leave to remain in reliance on Article 8 ECHR. The covering letter from the appellant's solicitors gave his immigration history incorrectly and referred to him repeatedly as a female. Leaving those points to one side, however, it was clear from that letter and the accompanying documents that the appellant sought leave to remain so that he could care for his father, Mohammed Farooq. He is a British citizen who was born in 1956 and is currently 67 years old. The appellant's father was said to be suffering from a range of health conditions which caused him to be heavily reliant on the appellant. That submission was supported evidence which included a medical report from a private GP named Dr Nosheen Waheed and a report from an Independent Social Worker named Angeline Seymour. Statements made by the appellant and his father were also provided to the Secretary of State.

The Respondent's Decision

7. The Secretary of State refused the appellant's application on 15 January 2021. She noted that the appellant had no claim under Appendix FM of the Immigration Rules because he was over the age of eighteen. She refused his private life claim on grounds of suitability and eligibility. In the former respect, the respondent invoked paragraph S-LTR 1.6 (presence not conducive to the public good) because the appellant had received a suspended sentence for sexual assault in 2016. She also invoked paragraph S-LTR 2.2(b) because the appellant had failed to disclose the conviction, which the respondent considered to be a material fact for the purposes of that paragraph. As for eligibility, the respondent did not accept that the appellant would encounter very significant obstacles to his re-integration to Pakistan.

8. The respondent then turned to consider Article 8 ECHR outside the Immigration Rules, as indicated by the sub-heading 'Exceptional Circumstances' in her decision. She did not accept that the appellant's removal would result in unjustifiably harsh consequences despite the appellant's claim that his father is 'fully reliant on you for his well-being'. She considered the reports of Dr Waheed and Ms Seymour before concluding as follows:

> The information above has been considered however, as a British Citizen your father is entitled to access care services available from the NHS and his local authority regardless of pressures on the system. It is noted that Ms Seymour has claimed he may not be entitled to the level of care you provide however, no evidence has been provided to show that you or your father has attempted to access these services from the NHS or social services or that the level of care he needs is unable to be met by them. It is therefore considered that alternative means of care can be made for your father.
>
> You have stated that your father's health and safety would be compromised if he would be forced to accompany you to Pakistan as he will be deprived on NHS treatment and care. As a British Citizen, your father is not required to leave the UK after the refusal of your application. Your father can remain in the UK and continue to access care services from the NHS and as stated above no evidence has been provided to show that your father is unable to access care through the NHS or local authority.
>
> It is noted from the reports provided that your father has stated he does not want anyone else to care for him. This has been considered however, your father preference over who cares for him is not considered to be an exceptional circumstance when alternative care is available.

The Appeal to the First-tier Tribunal

9. The appellant appealed against this decision and his appeal was heard, as we have already noted, by Judge Murshed. In her reserved decision, Judge Murshed found that the respondent had failed to show that the appellant's presence was not conducive to the public good: [35]. She accepted that the appellant had dishonestly failed to disclose a material fact in his application: [43]. The judge found that the appellant would not experience very significant obstacles to his integration to Pakistan: [53].

10. Judge Murshed then considered Article 8 ECHR outside the Rules. She accepted, following an impressive review of the relevant authorities and evidence, including the reports of Dr Waheed and Ms Seymour, that there was a protected family life between the appellant and his father. She was satisfied that the appellant lived with his father, who required full time care and received support of a practical and emotional nature from the appellant. This, she found, established that there was a relationship of more than normal emotional ties between father and adult son which sufficed to engage Article 8 ECHR in its family life aspect: [85].

11. The judge then undertook a 'balance sheet' assessment of the proportionality considerations in the case and, having done so, she found as follows, at [88]:

> I find that the pros in favour of the appellant, in particular, the care he provides for his father which I find cannot be replaced by social services or the NHS, tips the balance to make this case exceptional. I find that in all the circumstances, refusal would result in unjustifiably harsh consequences for the appellant's father, and therefore the appellant's appeal is allowed under Article 8 ECHR.

The Appeal to the Upper Tribunal

12. The respondent appealed to the Upper Tribunal and we found that the judge had omitted material considerations from her assessment of proportionality. We concluded that the judge had failed, within her assessment of proportionality, to consider the appellant's criminality, his deception in his application for leave to remain and the fact that his family life with his father was formed or deepened at a time when his immigration status was precarious or unlawful. We rejected Mr Youssefian's submissions that the judge had necessarily taken those matters into account and that her decision would have been the same but for the omissions. We concluded that the judge's assessment of proportionality could not stand but we preserved the primary findings of fact and the assessments under the Immigration Rules which were untainted by the leal errors into which the judge had fallen.

The Resumed Hearing

13. At the start of the hearing before us, we ensured that we had access to the evidence upon which reliance was to be placed. Mr Youssefian confirmed that he would be referring to the appellant's main and supplementary bundles and the respondent's bundle in addition to his skeleton argument. Ms Ahmed said that she would be referring to the respondent's review before the First-tier Tribunal in addition to the documents identified by Mr Youssefian.

14. We were invited to consider the extent to which the findings of the First-tier Tribunal had been preserved. We explained that the primary findings of fact made by the judge were preserved but that we were willing to consider any updating evidence, whether oral or documentary. Ms Ahmed suggested that Mr Youssefian had said to her that the judge's finding that the appellant's removal would result in unjustifiably harsh consequences had been preserved. As both advocates accepted, however, the preservation of that conclusion would have been illogical as it would have disposed of the appeal without more.

15. Mr Youssefian invited us to disregard the appellant's first witness statement. We doubted whether we were able to do so, given that the statement had been filed and served and that Ms Ahmed was able to ask whatever questions she wished about such evidence. Mr Youssefian therefore asked us to bear in mind what was said in the second statement about the preparation of the first. We agreed to do so, in the event that it was necessary.

16. We heard oral evidence from the appellant and from Mr Saleem, who is a friend of the family. We do not propose to rehearse their evidence in this decision. We will refer to it insofar as it is necessary to do so to explain our conclusions.

Submissions

17. Ms Ahmed relied on the refusal letter and the respondent's review and submitted that the question before the Tribunal was whether the appellant's removal would result in unjustifiably harsh consequences, particularly for his father. It was notable, she submitted, that there was no updating medical evidence but that there was a suggestion in the oral evidence given by the appellant and Mr Saleem that the appellant's father had deteriorated. It was also notable that nothing had been done by the appellant to enquire into alternative care for his father, despite what had been said by Judge Murshed at [87]. There was no clear

finding on the part of the FtT about the likelihood of the appellant's father receiving alternative care.

18. Ms Ahmed submitted that the appellant had clearly attempted to mislead the Tribunal. He had stated that his father had last travelled to Pakistan in 2016 or 2017, whereas the truth was clearly as stated by Mr Saleem, which was that he had travelled to Pakistan only a few months ago and had stayed there for three months or so. This obvious lie undermined the extent to which the appellant's evidence could be relied upon. It was notable that the appellant's father's trip to Pakistan in 2016/2017 had not been disclosed to Dr Waheed or Ms Seymour. Nor was there any consideration in those reports of the assistance provided by Mr Saleem. Ms Ahmed submitted that Mr Saleem was clearly an important figure in the appellant's father's life and that he would be able to provide some support in the appellant's absence.

19. In light of the evidence given before the Upper Tribunal, it was clear that the consequences for the appellant's father would not be as severe as had previously been thought. There were in any event significant factors which militated against the appellant in the assessment of proportionality. He had committed a criminal offence; he had overstayed whilst making a host of unmeritorious applications; and he had attempted to deceive the Home Office and the Upper Tribunal. In all the circumstances, the respondent had succeeded in showing that the appellant's removal would be a proportionate course.

20. Mr Youssefian began his submissions by inviting us to reject any attempt by Ms Ahmed to go behind the findings of fact which had been preserved. It was only permissible to do so, he submitted, if there had been a significant change of circumstances. It had been suggested by Ms Ahmed that there was no updating evidence about the father's situation but that was not so, because there was the oral evidence given by the appellant and Mr Saleem. The latter was accepted by the respondent to be a truthful witness and he had stated clearly that the appellant's father had deteriorated. Whilst there was no updating medical evidence, the material previously adduced showed that his condition is a degenerative one. His recent travel to Pakistan was of limited relevance, since it was obviously the case that a person who used a wheelchair permanently could travel on an aeroplane. Mr Youssefian invited us to consider the significance of the appellant's lie, adopting the approach in *Uddin v SSHD* [2020] EWCA Civ 338; [2020] 1 WLR 1562, at [11]. The consistent medical evidence showed that the appellant's father's condition was serious and worsening. It was appropriate for the Tribunal to consider the present circumstances and the likely future circumstances of the appellant's father: *MM (Article 8 – family life – dependency) Zambia* [2007] UKAIT 00040.

21. It was relevant to note that Ms Seymour had detailed the dire conditions in which the appellant and his father already live. If the appellant were to be removed, those conditions would be intolerable for the appellant's father. His care needs were all encompassing and of an intimate nature and could not be met by Mr Saleem.

22. Mr Youssefian accepted that the appellant had overstayed since the expiry of his leave to enter but he noted that the respondent could have taken steps to remove him despite the 'entirely hopeless' applications he had made under the EEA Regulations. The fact that she had failed to do so diluted the public interest

in immigration control, applying what was said in *EB (Kosovo) v SSHD* [2008] UKHL 41; [2009] 1 AC 1159 and *MN-T (Colombia) v SSHD* [2016] EWCA Civ 893.

23. Only limited weight could properly be attached to the conviction, given the sentence imposed and the fact that the sex offender registration expired in August 2023. The sentence was far below the automatic deportation threshold, and it was the appellant's only offence, committed many years ago.

24. Mr Youssefian acknowledged that it was unattractive that the appellant had been dishonest in his dealings with the Home Office and the Tribunal but submitted that his case was not really about that; it was about how his father would suffer if he was deported. It was worth recalling that the appellant had derived no benefit from his lie to the Home Office. Whist dishonesty is a serious matter and had to be given due weight, the importance of that dishonesty should be carefully calibrated in this case.

25. It was relevant that the appellant had been in the UK for many years and that he had no history of employment in Pakistan. He had only made two brief visits there. The Upper Tribunal's decision in *Rajendran (s117B - family life)* [2016] UKUT 138 (IAC) had been clarified in *Lal v SSHD* [2019] EWCA Civ 1925; [2020] 1 WLR 858, as regards the little weight provisions in s117B of the Nationality, Immigration and Asylum Act 2002. It was not necessarily appropriate to give limited weight to the relationship between the appellant and his father; the relationship had begun in its current form in 2016 and the appellant's status was lawful then. There was a world of difference between the appellant's father going to Pakistan for three months and trying to live there permanently. All things considered, the Upper Tribunal should reach the same conclusion as Judge Murshed, albeit for different reasons.

26. Ms Ahmed sought to respond to Mr Youssefian's submissions. We permitted her only to do so in order to correct anything which was said to be inaccurate in the appellant's submissions. She therefore made two points. The first was that the appellant had been given Form IS151A (a notice to any overstayer) in 2015 and that it could not be said that the respondent had been inactive at that time. The second was that the respondent's stance in the refusal letter as regards the appellant and his father travelling to Pakistan together had been neutral, whereas that was a very real possibility if he had so recently returned there for several months.

27. We reserved our decision at the end of the submissions.

Analysis

28. It is convenient to begin by considering the very last submission which was made to us, as recorded above. By that submission, Ms Ahmed sought to encourage us to consider whether it would be proportionate to expect the appellant's British father to return to Pakistan with him so that he could continue to benefit from his care there. In *SSHD v HA (Iraq)* [2022] UKSC 22; [2022] 1 WLR 3784, Lord Hamblen adopted the label used by Underhill LJ in the Court of Appeal in respect of that scenario. It was described as the 'go scenario', in which the family accompanied the person to be removed, as compared to the 'stay scenario' in which the family remains in the United Kingdom whilst the appellant is removed.

29. Ms Ahmed submitted that the respondent had adopted a 'neutral' position on the go scenario in the letter of refusal, and that it was open to us to consider that question. We disagree, for three reasons. Firstly, the refusal letter is plainly expressed in terms which indicate no attempt on the part of the Secretary of State to suggest that the stay scenario was in real contemplation. Secondly, it is clear from the decision of the judge in the First-tier Tribunal, as it is from the respondent's review, that there was no suggestion in the FtT that the appellant and his father could relocate to Pakistan. She noted at [87] that the 'respondent was not suggesting that Mr Farooq can go to Pakistan'. Thirdly, although Ms Ahmed was entitled (as we shall see) to submit that matters had moved on evidentially since the hearing in the FtT, it was not suggested to the appellant or to Mr Saleem (who is clearly close to the family) that the appellant's father could up sticks and live permanently in Pakistan.

30. Submissions that a British citizen can relocate to the country to which it is proposed to remove a family member are frequently encountered in the Immigration and Asylum Chamber. That is quite properly so, given the regular reference to that aspect of an Article 8 ECHR enquiry in the decisions of the Strasbourg court. But it is not, in our judgment, a submission which can merely be made at the very end of lengthy appellate proceedings. To echo what was said by Sedley LJ in a protection context, the 'go scenario' is a serious and frequently problematical issue, requiring proper notice, proper evidence and proper argument (*Daoud v SSHD* [2005] EWCA Civ 755, at [12]; the particular context there was a 'throw-away submission' about internal relocation within Sudan). Because the point was never previously raised by the Secretary of State, it was not squarely addressed in the written or oral evidence, nor (quite properly) was it addressed by Mr Youssefian in his written or oral submissions.

31. For all of these reasons, we consider that this case is and always been about the 'stay scenario', in which the appellant returns to Pakistan whilst his father remains in the UK. It having been accepted by the FtT that there is a protected family life between father and son, it is the proportionality of that course of action with which we are concerned.

32. The First-tier Tribunal dealt at some length with the relationship of dependency between the appellant and his father and we do not propose to repeat all of what was said by Judge Murshed. We have considered the reports of Dr Waheed and Ms Seymour for ourselves. We have also considered the appellant's father's GP records and the letters written by the GP. It is quite clear that the appellant's father suffered a fall from a building around thirty years ago but that he was able to continue working for the next two decades or so. We see reference in the decision of First-tier Tribunal Judges Froom and Issacs to the appellant's father having worked in a dry-cleaning shop in 2015. There is reference in the expert evidence to his having worked as a chef after that, owning and running his own restaurant. His health began to deteriorate seriously in 2012, however, and Dr Waheed records at page 4 of her report that he was forced to give up work as a result his health difficulties "3-4 years ago". Her report was written on 10 March 2020. We note that there is evidence in the papers that the appellant's father is in receipt of Employment Support Allowance. We see in Ms Seymour's report that he is also in receipt of Personal Independence Payment on the standard basis. Mr Saleem recounts that he has recently succeeded in securing Universal Credit for the appellant's father. It is clear that he has been in receipt of public funds for some time as a result of his incapacity.

33. There are various lists of the appellant's father health conditions before us. We note the way in which the GP's records documents his worsening situation. Dr Waheed had those records before her when she examined the appellant's father. She listed five principal problems: chronic lower back pain, bilateral knee pain, hypertension, insulin dependent diabetes, and chronic pain and weakness in the hands. The appellant's father described to Dr Waheed and to Ms Seymour how these difficulties had an impact on his daily life and resulted in his dependency on personal care which was provided by the appellant. Again, we are not going to rehearse all of the problems but he is unable, for example, to climb stairs or to cook. The single room which he and the appellant occupy is on a different floor from the kitchen, the bathroom and the toilet and he requires assistance to get to each. He is depressed and anxious and frequently struggles even to get out of bed. He requires assistance with washing, even though he has a shower stool.

34. The judge in the First-tier Tribunal made detailed findings on this evidence. We consider three of those findings, at [85] of the judge's decision, to be critical. Firstly, that the appellant's father required full-time care which is provided by the appellant. Secondly, that it was highly unlikely that the state would provide the level of full-time care required and that the sort of care required 'can only be provided by a close family member'. Thirdly, that the appellant's father's condition would worsen with age and that his mental health would in any event deteriorate if the appellant was required to leave the UK.

35. Following our ruling at the start of the hearing that updating evidence could be provided, Mr Youssefian called the appellant and Mr Saleem, both of whom stated that the appellant's father's condition had worsened to the point that they had secured a wheelchair for him. There was no medical evidence of this but we note that Ms Ahmed was content to accept it, given that she accepted in terms that Mr Saleem was a credible witness. We also accept Mr Youssefian's submission – based squarely on the medical evidence as it was – that the debilitating back pain which resulted from the fall thirty years ago is a symptom of a degenerative condition. The FtT determined the appeal over a year ago and it is more likely than not that the appellant's father's condition has deteriorated in the way suggested. His mobility was poor when he appeared via video link before the FtT. We accept that it is worse now, and that his dependency on the assistance of others will have increased correspondingly.

36. The oral evidence also revealed a dimension to this case which would not have been clear to the First-tier Tribunal. During her cross-examination of the appellant and Mr Saleem, Ms Ahmed sought to ask both of them whether, and when, the appellant's father had last returned to Pakistan. There was some objection by Mr Youssefian to this line of questioning, but we were satisfied that it was potentially relevant to the extent of the appellant's father's deterioration, which was in any event unsupported by medical evidence.

37. The appellant stated that his father had returned to Pakistan in 2016 or 2017. (We note that this was not disclosed to the First-tier Tribunal, but nothing turns on that.) The appellant was asked whether his father had been to Pakistan again. He said that he had not. When the appellant was asked who his father went to Pakistan with in 2016/2017, he chose not to answer the question, instead stating that 'He was not that bad at that time'. When pressed, he said that his father had been able to travel at that time. He had stayed for one month and had been looked after by the appellant's mother and brother whilst he was there.

38. When Mr Saleem was cross-examined, a rather different picture emerged. He stated that the appellant's father had last returned to Pakistan some seven to eight months before the hearing, that he had stayed for around three months and that he had travelled there by himself. Re-examined by Mr Youssefian, Mr Saleem said that arrangements had been made with the airline for provision of a wheelchair and that he had taken the appellant's father to and from Heathrow.

39. We did not consider that the evidence about the appellant's father returning to Pakistan served to undermine the conclusions reached by the FtT about his state of health. As Mr Youssefian observed in his submissions, there is extensive documentary evidence about his degenerative conditions and the resulting mobility and other such difficulties. As Mr Youssefian also observed, the fact that a person is able to take an international flight does not suggest in itself that they are not dependent on a wheelchair, for example. It is thankfully the case that airlines are able to make provision such as Mr Saleem described in this case, so as to ensure that disabled persons can travel by air.

40. We did consider Mr Saleem's evidence about the recent trip to Pakistan to reveal two things, however. Firstly, that the appellant has no qualms about lying if he thinks that the truth would be prejudicial to his case. As we shall explain below, this is not the first or even the second time that this tendency has been apparent. Secondly, the evidence that the appellant's father was able to travel to Pakistan and to spend three months there without the appellant shed light on the extent to which he can properly thought to be reliant upon care which can only be provided by the appellant.

41. There is nothing before us to suggest that the care which was provided to the appellant's father by family members in Pakistan was anything other than adequate. Equally, there is nothing before us to suggest that the appellant's father was unable to manage during the long flight to Pakistan, particularly as regards the monitoring and control of his diabetes.

42. We accept that the appellant's father is dependent on the assistance of others for the reasons we have given. Insofar as this case has been presented as one in which it is only the appellant who understands his father's particular needs and is the only person who can tend to those needs adequately, that is plainly not so. The judge in the First-tier Tribunal found that the appellant's care could not be replaced by social services or the NHS but she was not aware, when she made that finding, that the appellant's father was shortly to travel to Pakistan for three months.

43. Although the FtT's finding on this point was 'preserved' by our first decision, the difficulties in drawing a bright line around such findings have been recognised in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 268 (IAC); [2020] Imm AR 1451, and the Upper Tribunal is clearly able to revisit such a finding when there is new evidence which could affect it. Whilst the latter statement is not to our knowledge the subject of any reported decisions, it must follow from the fact that the Upper Tribunal can re-open its finding that an FtT decision was vitiated by an error of law: *AZ (error of law: jurisdiction; PTA practice) Iran* [2018] UKUT 245 (IAC) refers.

44. The proper approach in relation to a finding of fact which is 'preserved' is, in our judgment, that which was described by Latham LJ at [25] of *DK (Serbia) & Ors v SSHD* [2008] 1 WLR 1246, albeit in a different statutory context. The Upper

Tribunal is entitled to revisit findings made by the FtT which are untainted by legal error where, as here, there is new evidence which affects those findings. It would be absurd if the Upper Tribunal was required to shut its eyes to such issues because a previous finding had been preserved; once evidence is admitted which cast proper doubt on such a finding, it may be revisited. Mr Youssefian recognised as much when he sought to call evidence to show that the appellant's father's condition had worsened. It just so happened that the updating evidence which he called for that reason brought with it the revelation that the appellant's father had recently returned to Pakistan for three months.

45. In the event that the appellant is required to leave the United Kingdom, his father's circumstances will evidently be different from those he recently experienced in Pakistan. He would not transfer from the care of the appellant to the care of other (and more numerous) family members. He would transfer from the care of the appellant to the care of the local authority, and we recognise that this process of transition would be traumatic for the appellant's father, who has become accustomed to the support provided by the appellant. In common with the judge in the FtT, we accept that it would be likely to involve a worsening of the appellant's father's depression and anxiety. We think it likely that this would be fairly serious, since the appellant's father is quite frail and has evidently become accustomed to the appellant's support. Equally, we think it is likely that aspects of the care provided by the appellant would not be provided by the local authority. By way of a single example, we note that the appellant massages his father's legs in order to alleviate the pain he experiences, and we think it unlikely that a local authority carer would do so.

46. Three other points about the appellant's father's transition away from the appellant's care must be made, however.

47. The first is that it would be erroneous to think that he would be without any other emotional support during that transition. We were impressed by the evidence of Mr Saleem, who was quite properly accepted by Ms Ahmed to be a credible witness. He is a kind and articulate man who has known the appellant and his father for many years. He is clearly close to the appellant's father and takes his own children to see him quite regularly. He described in his evidence how he has assisted the appellant's father with his benefits and has taken him to hospital. It was not suggested to Mr Saleem that he might accommodate the appellant's father and we do not consider that possibility but it is clear that Mr Saleem is available to support the appellant's father whilst he becomes accustomed to life without the appellant.

48. Secondly, there is no evidence before us which suggests that the local authority would neglect its statutory duty to provide care for the appellant's father. The appellant's father would not have to arrange that himself; Mr Saleem has helped with his entitlement to benefits in the past and there is no proper reason to think that he would not liaise with the local authority so as to ensure that proper care is provided. We would observe that there is equally no reason why that process cannot begin shortly after the notification of this decision; the local authority is not relieved of its obligation to conduct a needs assessment under s9 of the Care Act 2014 because the appellant's father's needs are currently being met: *R (Antoniak) v Westminster CC* [2019] EWHC 3465 (Admin)

49. Thirdly, although the appellant's father's emotional state is likely to worsen as a result of the appellant's removal, it seems highly unlikely that the physical

conditions in which he is accommodated could do anything but improve upon the intervention of the local authority. The report of Ms Seymour makes for shocking reading, given that she notes that the property in which the appellant lives with his father is unheated, damp, mouldy and dangerous in several respects, including having steep stairs which he struggles to climb and uneven and slippery tiles in the bathroom. These premises are privately rented by the appellant's father, who must support himself and the appellant from the public funds he receives. In the likely event that he is adjudged to be a person to whom the local authority has statutory duties to provide accommodation and care, it is inconceivable that he would be required to live in what Ms Seymour understandably described as 'abject poverty'. To that extent at least, we are satisfied that the appellant's father's predicament would likely be improved by the appellant's removal.

50. We accept, therefore, that the 'stay scenario' of the appellant being removed from the UK whilst his father remains would be very challenging for the latter. He is a vulnerable man who has become dependent on his son through no fault of his own and he will find the transition to local authority care very difficult.

51. We also take full account of the consequences for the appellant. We accept that he will find his separation from his father very difficult. They are clearly close and the appellant has accepted his responsibility to care for his father without demur. After so many years of caring for him, the appellant will inevitably be very concerned about how his father will manage without him. Although we proceed, as we must, on the basis that 'social services would perform their duties under the law' (as Arden LJ, as she then was, put it at [53] of *BL (Jamaica) v SSHD* [2016] EWCA Civ 357), the appellant's anxiety for his father will doubtless remain. Aside from his concern over his father, there are other consequences for the appellant in being returned to Pakistan. He will be required to leave the country in which he has lived for many years and will be returning to a country in which he has not lived as an adult. We note that he has returned to Pakistan on only two occasions since his arrival. We take those dates from the respondent's review. He returned in June 2013 and April 2014 for five weeks and three and a half weeks respectively.

52. Those latter difficulties must not be overstated, however, since the appellant has a support network in Pakistan, including his mother and his brothers. The FtT found that there would not be very significant obstacles to his re-integration to Pakistan and there is no reason to depart from that finding. We nevertheless proceed on the basis that there will be some difficulty for the appellant in returning to a country in which he has not set foot for some years.

53. We balance those factors on the appellant's side of the balance sheet against a range of factors relied upon by the Secretary of State. The first is the appellant's criminality. In this respect, we largely accept the submissions made by Mr Youssefian as to weight. The offence was clearly not the most serious; it attracted only a suspended sentence which was some way beneath the threshold for automatic deportation and the requirement for the appellant to register as a sexual offender is soon to come to an end. Nevertheless, the fact that the appellant committed a criminal offence whilst he was in the United Kingdom without leave to remain is a matter to which we must give some weight in the scales of proportionality, as strengthening the public interest in the maintenance of immigration control.

54. We consider that the appellant's deception also serves to increase the public interest in immigration control. It is quite clear that he has lied throughout his dealings with the Home Office and the Immigration and Asylum Chamber, in the hope that he would improve his prospects of remaining in the UK. The First-tier Tribunal concluded in June 2015 that the appellant had lied about various matters including, notably, his claim that his mother had died after returning to Pakistan. Ironically, the appellant stated before us that his mother was alive in Pakistan and that she had stayed there because she preferred it to the UK. His suggestion in 2015 that she had died was clearly an attempt to mislead the Tribunal to show that he was dependent on his father, as he was claiming at the time.

55. The appellant also withheld his conviction from the respondent when he applied for leave to remain. Judge Murshed concluded that he had acted dishonestly in that regard and that is plainly so. As we have recorded, however, the appellant also decided to mislead the Upper Tribunal when he was asked about his father's return to Pakistan. He evidently did so because he thought that the truth might damage his prospects of remaining in the UK. Mr Youssefian invited us to consider the significance of the lie and we have done so above insofar as it affects our assessment of the facts. The most significant consequence for present purposes is that it significantly increases the public interest in immigration control. We think Ms Ahmed was right to draw on what was said (albeit in the context of citizenship) in *Ciceri (deprivation of citizenship appeals: principles)* [2021] UKUT 238 (IAC); [2021] Imm AR 1909 about such fraudulent conduct. Amending what was said at (4) of the judicial headnote to that decision, there is a clear public interest in maintaining the integrity of immigration control in the face of attempts by individuals to subvert it by fraudulent conduct.

56. The public interest in the appellant's removal is increased further by reference to the fact that he has been present in the UK unlawfully since October 2015. We should be clear, however, that this is not a point which arises by reference to section 117B(4) or (5) of the 2002 Act. Those subsections apply very specifically to a private life or a relationship with a qualifying partner established during unlawful stay or to a private life established during a precarious stay: *Lal v SSHD*, as cited by Mr Youssefian, refers. The appellant's private life is not to the fore in this case and he has no qualifying partner. The fact that he has remained in the UK unlawfully for nearly eight years is, instead, another matter which adds weight to the public interest in immigration control, whether by reference to s117B(1) or more generally.

57. We should consider a submission made by Mr Youssefian about this period. He submitted that the public interest in immigration control was positively diminished because the respondent could have taken action to remove the appellant. He cited the authorities we have mentioned above in support of that submission. We agree with Ms Ahmed on the point, however. The appellant was given a notice in 2015 which made it perfectly clear that he had no leave to enter or remain and that he was expected to leave. He then made what Mr Youssefian described as a series of 'entirely hopeless' applications under the EEA Regulations. His circumstances could not, in our judgment, be any more different from those considered by Lord Bingham in *EB (Kosovo)* or the Court of Appeal in *MN-T (Colombia)*. The respondent was not resting on her laurels during this time, allowing the appellant's sense of impermanence to fade over the years; she was dealing with the unmeritorious claims he persisted in making. In our judgment, the period during which the appellant remained unlawfully and continued to

make baseless claims in reliance on EU Law serves to strengthen the public interest in immigration control still further.

58. We also recall what was said by Lord Reed at [54] of *R (Agyarko & Anor) v SSHD* [2017] UKSC 11; [2017] 1 WLR 823 about individuals who remain unlawfully and create a family life before presenting the Secretary of State with a fait accompli. The context in those two appeals was a family life relationship between a foreign national and their British partner. What was said by Lord Reed in that connection was more recently cited by Carr LJ at [70] of *Mobeen v SSHD* [2021] EWCA Civ 886. The context in that case was much closer to the facts of the instant case, in that a foreign national had sought (whether intentionally or not) to circumvent the Adult Dependent Relative provisions of the Immigration Rules by entering the UK as a visitor and establishing a family life with her adult children here. Carr LJ, with whom Baker and Underhill LJ agreed, held that the First-tier Tribunal had erred in its conclusion that there was no protected family life but dismissed the appeal in any event because the alternative conclusion as to proportionality was 'unimpeachable'. In reaching the latter conclusion, Carr LJ cited what had been said by Lord Reed about such fait accompli cases and stated immediately thereafter that there was 'only ever one realistic answer on the question of proportionality'. It is clear, therefore, that the appellant's decision to remain in the UK without leave before presenting the Secretary of State with a fait accompli is a matter which should also count against him in the proportionality assessment.

59. The judge in the FtT proceeded on the basis that the appellant could speak some English and that he was not a burden on the state. We doubt that we would have reached either of those findings, but they were not called into question before us and we proceed on the same basis. Those are neutral matters, however, in that they do not weigh positively in the appellant's side of the proportionality assessment.

60. We should deal with a final matter which might be thought to follow on from the FtT's conclusion that the appellant does not represent a financial burden on the state and our conclusion that his father will have to receive care from the public purse in the event of the appellant's removal. At [30] of his skeleton argument before the FtT, Mr Youssefian submitted that 'the inevitable and additional strain on the UK's social care system following A's removal very significantly reduces the public interest in A's removal.'

61. We accept that the removal of the appellant is likely to result in a significant burden on the social care system of the United Kingdom. Given the fact that the rest of the family is in Pakistan and that there is seemingly no one else who can provide the necessary care in the community, residential care is the only feasible option for the appellant's father, given his needs.

62. We do not accept, however, that the resulting burden reduces the public interest in immigration control, and we certainly do not accept that it 'very significantly' reduces the public interest in that course. There is no provision in the Immigration Rules which provides a route by which a carer might remain in the United Kingdom. The absence of such a route provides a clear indication of the priority generally accorded to immigration control over the desire to provide care in the community. That priority was set out in *R v SSHD ex parte Zakrocki* (1996) 32 BMLR 108 and is re-affirmed in the Secretary of State's current policy, as is clear from paragraphs 8.114 to 8.121 of the current edition of *Macdonald's*

Immigration Law and Practice. The Secretary of State made it clear in her decision in this case that she considered it appropriate to follow that long-established approach, hence her reference in the section reproduced above to the appellant's father 'access[ing] care through the NHS or local authority'. These are matters of governmental policy into which the Tribunal should not encroach. If the democratically accountable government has decided that public funds should be expended on the care of those who could be otherwise be cared for by a person who requires leave to remain, it is not for the Tribunal to take the contrary view. The increased cost to the public purse is not therefore a matter which reduced the public interest in immigration control; it is the natural consequence of that policy decision.

63. Drawing all of these threads together, the outcome of the proportionality balance is quite clearly that the public interest in immigration control outweighs the appellant's family life with his father. In reaching that conclusion, we have taken full account of the circumstances of the appellant and his father, as we are required to do by *Beoku-Betts v SSHD* [2008] UKHL 39; [2009] 1 AC 115. We accept that the separation will be difficult for both of them and particularly the appellant's father, but we consider that those consequences are amply outweighed by the public interest in the appellant's removal. The appellant has remained unlawfully, made a string of hopeless applications, lied throughout his dealings with the Home Office and the Tribunal, and has committed a criminal offence in this country. There is the most cogent public interest in the removal of such an individual and we are satisfied that the respondent has established that it would be proportionate for her to do so.

Notice of Decision

The decision of the First-tier Tribunal having been set aside, we remake the decision on the appellant's appeal by dismissing it.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 May 2023