OUTER HOUSE, COURT OF SESSION

2021 CSOH 22

P20/20

OPINION OF LORD HARROWER

In the cause

MUHAMMAD MOHSAN JAVAID

Petitioner

for Judicial Review of a decision by the Upper Tribunal (Immigration and Asylum Chamber) to refuse to grant the petitioner permission to appeal

Pursuer: Caskie; Drummond Miller LLP
Defender: Maciver; Office of the Advocate General

26 February 2021

Introduction

[1] In this petition for judicial review the petitioner seeks reduction of the decision of the Upper Tribunal (Immigration and Asylum Chamber) ("the UT"), refusing to grant permission to appeal from the decision of the First-tier Tribunal (Immigration and Asylum Chamber) ("the F-tT"), dismissing his appeal from the Secretary of State's refusal to grant him leave to remain in the United Kingdom. In a separate decision, the F-tT had already refused to grant permission to appeal, grounds having been presented to it that were more elaborate and extensive than those presented to the UT. A preliminary issue arises

regarding whether the petitioner may now rehabilitate his original grounds of appeal, or otherwise invoke grounds not referred to the UT for their consideration.

Procedural background

[2] The petitioner is a citizen of Pakistan, born on 17 June 1993. He arrived in the United Kingdom on 11 January 2006 with leave as a visitor. His leave expired on 15 December 2010. On 9 August 2012 he was issued with removal papers. The petitioner made a number of unsuccessful applications for leave to remain, relying, in particular, on his rights under article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In his most recent application, dated 3 July 2018, he maintained that if he were required to leave the United Kingdom his family and private life would be disrupted. The Secretary of State refused his application and, in a decision dated 12 June 2019, following a hearing in which the petitioner was represented by counsel, the F-tT dismissed his appeal.

[3] Nine grounds of appeal were presented to the F-tT when the petitioner first sought permission to appeal ("PTA"). In renewing the petitioner's application before the UT, his legal representatives made no reference to the document containing these original grounds, preferring to base their application on the following:

> "**Grounds of Appeal**
>
> **Paragraph 20 and 21**
>
> The IJ [i.e. Immigration Judge of the F-tT] accepts that there does exist a family life, however the IJ still proceeds to refuse the appeal.

Paragraph 22

The IJ states that contact can be maintained through other means but this is not plausible as there does exist a family life and in light of the case of Mansoor it would be unfair to expect him to return to Pakistan."

[4] The UT's decision refusing PTA was almost as brief:

"1. In the FtT, Judge Handley dismissed this appeal, and Judge Robertson refused permission to appeal to the UT, both giving clear reasons.

2. The first ground of appeal in this application, directed at [20 – 21] of the decision, is plainly wrong. The judge said it was accepted that the appellant is part of a family unit. There is no rule that all members of a family unit have a right to remain in the UK.

3. The second ground, directed at [22], says it is not plausible that contact can be maintained by other means, but it plainly can; and although contact would be of a different and lesser nature, existence of some family life does not automatically confer a right to remain.

4. The grounds make no arguable proposition of error on a point of law."

[5] Counsel for the petitioner sought to disown the grounds of appeal submitted to the UT, frankly acknowledging that they were inept. Instead, he made two arguments purporting to identify an error of law on the part of the UT. Firstly, he argued that the UT had adopted the reasons given by the F-tT in refusing to grant PTA. In doing so, their reasoning was vitiated by the exact same errors of law made by the F-tT when it refused permission. Secondly, he argued, under reference to *R* v *Secretary of State for the Home Department, ex p Robinson* [1998] QB 929, that the UT had erroneously failed to identify readily discernible and obvious points of Convention jurisprudence in favour of the petitioner. This second argument was introduced only tangentially in the petitioner's note of argument but developed by counsel at the substantive hearing. As I come on later to explain, it formed no part of the petition, on the basis of which, on 22 July 2020, permission to proceed with this judicial review had been granted.

[6] I will consider each of these arguments in turn, being mindful of the Inner House's observations in *SA (Nigeria)* v *Secretary of State for the Home Department* 2014 SC 1, after a reclaiming motion had been abandoned in very similar circumstances, that it was "regrettable that the Lord Ordinary was led down a path which involved a detailed and time-consuming consideration of the FTT's lengthy determination". In an application for review in this category of case, it was of "vital importance that the court focus upon what is actually being reviewed" (paragraph 17).

Adoption

[7] The petition states that the grounds of appeal submitted to the F-tT were "renewed" at the UT, but there seems to be no basis for that averment, and this part of the petitioner's argument was not pursued at the substantive hearing. Rather, counsel for the petitioner founded on paragraph 1 of the UT's decision, where it stated that the F-tT had given "clear reasons" for its decision refusing PTA. By endorsing the F-tT's reasons, the UT should be understood as having expressly or impliedly adopted the reasoning of the F-tT refusing PTA (paragraph 9 of the petition).

[8] The respondent argued that the UT had answered the only grounds which it was asked to consider. These did not include the grounds presented to the F-tT. In paragraph 1 of its decision, the UT was merely acknowledging that the F-tT had refused the appeal and then refused PTA. The UT did not adopt the F-tT's reasoning.

[9] I can deal with this argument quite briefly. The question is one of how the UT's reasoning should be interpreted. In answering that question it is relevant to have regard to the context in which the UT's decision was made. That context includes the guidance issued jointly by the UT and F-tT under paragraph 7 of Schedule 4 to the Tribunals, Courts and

Enforcement Act 2007. The application to the UT for PTA was sought on 25 September 2019. The applicable guidance was therefore the Joint Presidential Guidance 2019 No 1: Permission to appeal to UTIAC, issued in August 2019 (replacing but not materially different from the UT's Guidance Note 2011 No 1, amended in September 2013 and July 2014). The guidance was not intended as a statement of law, but was addressed to "interested parties" with a view to promoting "consistent and high standards" in decision-making. As such, the UT would reasonably have expected those applying to the UT for PTA, particularly where, as here, the applicant was legally represented, to have had regard to the relevant guidance when framing their grounds of appeal.

[10] The guidance provides as follows.

> "Renewed applications
>
> 32. An application to the UT for permission to appeal is a fresh application and must include all the grounds on which the appellant seeks to rely, including those contained in the application to the FtT. It is sufficient to say that those grounds are relied upon. But if grounds set out in the first application are not included in the renewed application, a judge is entitled to assume that the appellant no longer wishes to rely on them. This should be recorded in the reasons for grant or refusal of permission.
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> 33. An application to the UT is not an appeal against the decision of the Judge who considered the application to the FtT and should not be drafted in that way. It is sometimes helpful for applicants to say why they disagree with the reasons given by the FtT for refusing permission, but it is never obligatory.
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> 34. In an application to the UT, an appellant may depart from or vary the grounds set out in the application to the FtT but the alleged error that is complained of must be in the original FtT decision."

[11] The guidance could hardly have more clearly stated the requirement expressly to include all the grounds on which the applicant wished to rely in its application to the UT. It explains that, if those are intended to include the original grounds submitted to the F-tT, nothing more is required than an incorporation of those grounds by reference. In the

absence of any such incorporation, the UT is "entitled to assume" that the applicant is no longer insisting on his original grounds. The guidance adds that, where such an assumption has been made, it should be recorded in the UT's statement of reasons.

[12] The UT in this case has not recorded any such assumption regarding whether it regarded the petitioner as having abandoned his original grounds of appeal. It might have been said, in support of the petitioner's argument from adoption, that the UT should be understood to have been following its own guidance. In the absence of any mention by the UT of the petitioner having abandoned the grounds submitted to the F-tT, the UT should be understood as having made the contrary assumption. Moreover, it might have been added, it is precisely because the UT assumed the petitioner was relying on his original grounds of appeal, that it must have felt it necessary to refer to the F-tT's reasons for refusing PTA, endorsing them as being clear.

[13] However, this argument only has superficial attraction. In the first place, I accept counsel for the respondent's submission that the UT's reference to the clarity of the F-tT's reasoning is made in the context of a merely prefatory statement of the appeal's procedural background. The UT made perfectly clear what it regarded as the relevant grounds before it, when it referred in the remainder of its reasons to "the first ground of appeal" and "the second ground", being the only two grounds presented to the UT.

[14] In any event, I note that there is a substantial overlap between the grounds laid before the UT and those submitted to the F-tT. Partly there is an overlap in the paragraphs of the original F-tT decision against which the grounds are directed, since both sets of grounds attack paragraphs 21 and 22 of the F-tT's decision refusing the appeal. But more significantly, ground 2 of the grounds before the UT was expressed in terms of the "plausibility" of the petitioner maintaining contact from Pakistan with those members of his

family in the UK. As such, and although counsel for the petitioner attempted to distance himself from it, ground 2 of the grounds before the UT was not materially different from ground 4 of the grounds before the F-tT, where the same point was expressed as an error on the part of the F-tT in "equiperating" [sic] modern remote communication with face-to-face communication. Against that background, it would have been reasonable to infer that the grounds laid before the F-tT were substituted, rather than supplemented, with the grounds laid before the UT.

[15] For these reasons, I do not accept the petitioner's argument that the UT adopted the F-tT's reasons for refusing the petitioner PTA.

***Robinson*-obviousness**

[16] Secondly, and in the alternative, counsel for the petitioner argued, under reference to *R* v *Secretary of State for the Home Department, ex parte Robinson*, *supra*, that the UT had erroneously failed to identify readily discernible and obvious points of Convention jurisprudence in favour of the petitioner. As is well known, *ex parte Robinson* involved consideration of the 1951 Geneva Convention and the 1967 Protocol Relating to the Status of Refugees. It held that, since the immigration authorities were obliged to ensure that the applicant's removal would not contravene the United Kingdom's obligations under the Convention and Protocol, where there was a readily discernible and obvious point in his favour, which had not been taken on his behalf, they, and the High Court exercising its supervisory jurisdiction by way of judicial review, should nevertheless apply it (at p945E-F). Analogous considerations apply in order to ensure that the United Kingdom does not contravene its obligations under the ECHR.

[17] One problem with this argument is that there is no obvious mention of it in the petition. The court in *SA (Nigeria)*, *supra*, having observed that the focus of any petition for judicial review in this category of case should be on the reasoning of the UT rather than the F-tT, continued, at paragraph 18: "It is, of course conceivable that a party could maintain that the UT had omitted to spot an obvious point of Convention jurisprudence […]. However, in order to do so, that party would have to have included that contention in any petition for judicial review". Founding on this passage, counsel for the respondent objected that the petition must fail since it did not include any contention that the UT had failed to identify any alleged "*Robinson*-obvious" point.

[18] It might be said, against the respondent, that it is in the very nature of a *Robinson*-obvious point that it should be applied precisely "where it had not been taken on [the petitioner's] behalf", since the objective is to ensure compliance with the United Kingdom's Convention obligations. Moreover, I am not strictly bound by the court's opinion in *SA (Nigeria)*, since the reclaiming motion in that case had already been abandoned prior to the opinion being issued. However, I must regard it as a highly persuasive authority, not least because the court considered it necessary, notwithstanding the abandonment of the appeal, to provide clarity in this area of the law. In any event, having considered the matter, I have respectfully come to the same conclusion. I do so for the simple reason that the obligation identified in *ex parte Robinson* to ensure that the United Kingdom complies with its international obligations falls upon the F-tT and the UT as immigration authorities, and not on the High Court or Court of Session.

[19] Some confusion may have arisen from the second paragraph of the editors' headnote to *ex parte Robinson* in the official law reports, which states that, "since [the appellate authorities] were obliged to ensure that the applicant's removal would not contravene the

United Kingdom's obligations under the Convention and Protocol, where there was a readily discernible and obvious point in his favour, which had not been taken on his behalf, they, *and the High Court exercising its supervisory jurisdiction by way of judicial review*, should nevertheless apply it" (emphasis supplied). This is a perfectly adequate summary for most purposes, but the risk of confusion arises if one reads it as affirming the existence of an obligation on the High Court or Court of Session, exercising their supervisory jurisdiction, of the same character as that falling upon the appellate authorities. The appellate authorities in *ex parte Robinson* were, of course, the special adjudicator and the Immigration Appeal Tribunal, whereas, in the present structure of immigration control, they are the F-tT and the UT. But whatever structure they may be given from time to time, the appellate authorities' obligation to ensure that the applicant's removal will not contravene the Convention arises because they are part of the decision-making process (*SS* v *Secretary of State for the Home Department,* [2012] EWCA Civ 945, Moore-Bick, LJ, at paragraph 17). The court, by contrast, is not part of the decision-making process, and, in particular, the Court of Session, exercising its supervisory jurisdiction, has no obligation to consider free-standing points of Convention jurisprudence, however *Robinson*-obvious, unless they have been raised in the petition (and permission to proceed in respect of them granted).

[20] Similar points were made by Lewison, LJ in *ME (Sri Lanka)* v *The Secretary of State for the Home Department* [2018] EWCA Civ 1486, when he stated that 'the "*Robinson* duty" is not applicable to an appeal to this court: *Srimanoharan* v *Secretary of State for the Home Department* (The Times, 13 June 2000). Thus, although this court may give permission to appeal on a ground that was not argued before the FTT or the UT, the grant of such permission is not a licence to take whatever points occur to the appellate advocate in preparing for the appeal. The arguments that can be raised on an appeal to this court are

limited by the grounds of appeal for which permission has been granted' (at paragraph 22). Although expressed in the context of the court's appellate jurisdiction, in my opinion these comments apply with equal if not greater force in the context of the supervisory jurisdiction.

[21] I accept that, at least in exceptional circumstances and in the context of the court's appellate jurisdiction, the court *may* pursue points of its own motion and whether or not raised in the pleadings: *Bulale* v *Secretary of State for the Home Department* [2009] QB 536. But that is quite distinct from the *ex parte Robinson* doctrine, which recognised an *obligation* on the appellate immigration authorities as organs of the state to ensure compliance with the state's international obligations. Moreover, because the court's freedom to pursue points of its own motion is not premised on any failure or error of law on the part of the appellate authorities, there is no requirement for such points to have been obvious, let alone *Robinson*-obvious, to anyone (*Bulale*, *per* Buxton, LJ, at paragraph 24; cf. section 13, Tribunals, Court and Enforcement Act 2007).

[22] It follows that the respondent is well founded in its submission that any contention that the UT failed to consider a *Robinson*-obvious point requires to have been stated in the petition. It remains to be considered in more detail whether the petition does indeed contain any allegation that the UT has failed to consider any *Robinson*-obvious points of Convention jurisprudence.

[23] Having set out, in paragraph 9 of the petition, the general proposition that the UT adopted the reasoning of the F-tT in refusing PTA, the pleader then seeks to develop that proposition under reference to a number of specific grounds. Without setting out the detail of these grounds here (they are considered below at paragraphs 28-39), it is obvious from the way the petition is drafted that each one of the arguments relied on by the petitioner is premised entirely on the adoption argument. The approval given by the UT to the F-tT's

reasons when refusing PTA is clearly regarded by the pleader as an essential step in the argument. Indeed had the pleader been complaining that the UT had failed to consider a *Robinson*-obvious point, it would have been quite unnecessary to have made any argumentative detour *via* the reasoning of the F-tT refusing PTA. All that would have been required would have been to identify an error in the F-tT's reasons refusing the appeal, and then explain why it was a point of such *Robinson*-obviousness that the UT fell into error in not spotting it. That this is not what the pleader has done is no doubt because it was not considered that the points fell into that particular category.

[24] I conclude that the petition does not contain any contention that the UT erred in failing to consider any *Robinson*-obvious point of Convention jurisprudence. For the reasons already advanced there is no obligation on this court, exercising its supervisory jurisdiction, to notice any such points of its own motion. Indeed, there is every reason not to do so, since the petition was only granted permission to proceed on the narrow adoption argument it contained, and which I have already rejected. No consideration will have been given by the Lord Ordinary granting permission to proceed to whether the petition contained a *Robinson*-obvious argument, still less to whether any such point passed the so-called "second appeals test". Moreover, our procedure assumes that the question of whether the second appeals test is met has already been determined at the stage when permission is granted (*SA (Bangladesh)* v *Secretary of State for the Home Department* 2019 SC 451, paragraph 28).

[25] It follows that the petition must be refused. However, in deference to counsel for the petitioner's submissions at the substantive hearing, and lest there be further procedure in this matter, I will briefly consider whether, notwithstanding the absence of pleading, any of the grounds now relied on raise a *Robinson*-obvious point of Convention jurisprudence. By *Robinson*-obvious, I mean, of course, a point that was not merely arguable, but one which

had a "strong prospect of success" (*ex parte Robinson,* at p946D) or one raising an important point of principle which "obviously requires consideration" (*SS* v *Secretary of State for the Home Department,* [2012] EWCA Civ 945, Moore-Bick, LJ, at paragraph 17). I am aware that I am now following counsel down a regrettable path involving detailed and time-consuming consideration of the F-tT's lengthy determination (*SA (Nigeria), supra,* at paragraph 17). In doing so, I remind myself only that the *Robinson*-obvious point must jump "out of the pages" (*per* Dyson, J, in *R* v *Immigration Appeal Tribunal ex parte Shen* [2000] INLR 389 (at paragraph 29), or at least, to continue the Inner House's metaphor in *SA (Nigeria)*, it must jump out from the undergrowth.

The facts established by the F-tT

[26] The starting point of any *Robinson*-obvious argument must be the facts as established by the F-tT (*ex parte Robinson,* p945E-F). These can be summarised as follows.

[27] The petitioner was born on 17 June 1993 and arrived in the United Kingdom on 11 January 2006. His leave as a visitor expired on 15 December 2010. On 9 August 2012 he was issued with removal papers. With regard to his immigration history, while there may have been some delays on the part of the immigration authorities, it was largely taken up with unsuccessful applications by the petitioner himself. His parents and three of his siblings lived in the United Kingdom. While his parents may have had health issues, they were not dependent on him. While the petitioner provided support and assistance to his parents, his siblings in the United Kingdom would be able to continue that support in the event that the petitioner was required to leave. Any advice and assistance provided by the petitioner to his brother could be continued from Pakistan using modern means of communication. The petitioner had other family in Pakistan. There was accommodation

available to him there. He retained a knowledge of Pakistani culture, and any language difficulties he might confront would be overcome within a reasonable period of time given his background in at least basic spoken Urdu. The petitioner had criminal convictions in the United Kingdom. In that connection, the petitioner's evidence that he "didn't do anything" and that he was told to plead guilty raised doubts about whether he was remorseful. A letter from an employer describing him as a "good worker" raised doubts about the credibility of his claim not to have been working at any point during his lengthy stay in the United Kingdom.

Paragraphs 10, 11, 12 and 14 of the petition

[28] Against that background, there are 5 grounds in the petition, corresponding to 5 of the 9 grounds of appeal laid before the F-tT. However, only four of these were insisted in at the substantive hearing: those found in paragraphs 10, 11, 12 and 14 of the petition (corresponding roughly to grounds 1, 2, 4 and 9 of the grounds of appeal before the F-tT). In what follows I am considering these arguments only insofar as they reveal a point of such *Robinson*-obviousness that the UT can be said to have erred in law in its failure to consider it. To simplify matters, all references henceforth to the F-tT are to the F-tT refusing the appeal, unless the contrary is stated or is obvious.

[29] Paragraph 10 of the petition asserts that the F-tT failed to give adequate reasons to explain why the petitioner, being someone who had narrowly failed to qualify for leave to remain under the Immigration Rules on the basis of length of residence in the United Kingdom, should nevertheless be refused leave outside the Rules. A complaint of failure to give adequate reasons may be one thing, but it does not identify a *Robinson*-obvious point of Convention jurisprudence. In ground 1 of the grounds before the F-tT refusing PTA, the

petitioner complains that the F-tT misdirected itself. It erred in law in attributing no weight whatsoever to the petitioner's "near miss" under the Rules. It should have looked to see whether there were any features in the petitioner's private life which might tip the balance of proportionality, requiring leave to be granted, exceptionally, outside the Rules.

[30] I do not accept that the F-tT misdirected itself. In paragraph 19, the F-tT stated that 'the law does not recognise a "near-miss" principle'. It went on: "There is no presumption that those falling just outside the policy should be treated as though they were within it or given special consideration for that reason". The F-tT then considered a number of reasons why the petitioner failed to make a compelling case outside the Rules. There is no obvious inconsistency in the F-tT's approach with that set out in the leading authority of *SS (Congo)* v *Secretary of State for the Home Department* [2016] 1 All ER 706, at paragraphs 54-56. Even if there were, the petitioner failed to identify from the evidence what aspects of his private life tipped the balance of proportionality in his favour.

[31] Paragraph 11 of the petition asserts that the F-tT fell into error when relying on a "predicted improvement" in the petitioner's father's health, rather than "the facts as they stood at the time the appeal was to be determined". This argument relates to paragraph 21 of the F-tT's decision, where it referred to evidence from the petitioner's father's doctor that the father would be able to return to work, after taking time off to recover. That the petitioner's father would be able to return to work is not a prediction but a prognosis; it is a statement of opinion about the likely course of a medical condition based on observable facts. In any event, the F-tT accepted that the petitioner provided support to his parents.

[32] Paragraph 12 of the petition maintains that the F-tT wrongly equiparates contact by modern means of communication from Pakistan with face-to-face contact. However, nowhere does the F-tT say any such thing. It merely concluded that contact could

adequately be maintained from Pakistan (paragraph 22 of its decision). As noted at paragraph 14 of this opinion, the same argument was in substance laid before the UT in the second ground of appeal. The UT held that contact could be maintained remotely, albeit that it would be of a "different and lesser nature".

[33] Finally, paragraph 14 of the petition complains that the F-tT had applied the wrong test. In paragraph 31 of its reasons, the F-tT stated that the petitioner would not be confronted with "insurmountable obstacles" on his return to Pakistan. Whether or not the petitioner would face insurmountable obstacles might be relevant to a "family life" claim under Appendix FM to the Immigration Rules. However, the petitioner's claim was based also on interference with private life under paragraph 276ADE of the Rules, where the test was whether the petitioner would face "very significant obstacles" to his integration in Pakistan. In applying the incorrect, more onerous test to his private life claim, the F-tT, it was argued, erred in law.

[34] Strictly speaking, of course, the task of the F-tT was to decide whether requiring the petitioner to leave the United Kingdom was incompatible with article 8 of the ECHR (and not merely to review the Secretary of State's decision), the scope of the appeal being confined to whether the Secretary of State's refusal was unlawful under section 6 of the Human Rights Act 1998 (section 82(1)(b) and section 113 of the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). Nevertheless, the Immigration Rules and associated guidance are highly relevant to the F-tT's task because they reflect the responsible Minister's general assessment of when interference with the right to respect for private and family life is justified under article 8(2) on the basis of legitimate public interests (*R(Ali)* v *Secretary of State for the Home Department* [2016] 1 WLR 4799, paragraphs 44-46, 50 and 53; *R(Agyarko)* v *Secretary of State for the Home Department* [2017] 1 WLR 823,

paragraphs 46-47). So the F-tT must take the Rules into account, as an expression of the Secretary of State's policy, and attach considerable weight to them at a general level, as well as considering all the factors which are relevant to the particular case. With that necessarily brief summary of the relevant legal principles in mind, I am not persuaded that the F-tT misdirected itself in its consideration of the petitioner's private and family life.

[35] Firstly, it is clear that the F-tT was aware of the correct test under paragraph 276ADE of the Rules, since it referred at paragraph 9 of its decision to the fact that the Secretary of State did not accept that there were any "very significant obstacles" to the petitioner's re-integration into Pakistan.

[36] Secondly, "insurmountable obstacles" is defined in paragraph EX.2 of Appendix FM as meaning the

> "very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner".

It is not obvious, still less *Robinson*-obvious, that "insurmountable obstacles" defined as "very significant difficulties" amounts to a higher test than "very significant obstacles".

[37] Thirdly, the F-tT's reference to "insurmountable obstacles" occurs at the end of paragraph 31, where, having considered all the available evidence, it concluded that "whilst the appellant will face difficulties on return to Pakistan, he will not face insurmountable obstacles. Any obstacles can be reasonably be [sic] overcome. There are no exceptional circumstances in this Appeal". When considering whether there are exceptional circumstances, the decision-maker is specifically instructed to consider private life and family life cumulatively (this instruction having been commented on, without disapproval, by Lord Reed in *Agyarko* at paragraph 19). Bearing that instruction in mind, it is not *Robinson*-obvious, at least not to me, that there is any error in the F-tT's reference to

"insurmountable obstacles", appearing as it does in a consideration of exceptional circumstances, where both private life and family life are cumulatively relevant. Put more bluntly, the F-tT was required to consider whether there were exceptional circumstances in the petitioner's case, and this is what it appears to have done.

[38] In any event, it is clear that the F-tT considered that any obstacles to the petitioner's re-integration into Pakistan were neither "insurmountable" nor "very significant". It accepted that the petitioner would face "difficulties" on his return to Pakistan, but considered that these could "reasonably be overcome" (paragraph 31). Standing these findings in fact, any misdirection in law must be considered immaterial.

[39] In conclusion, I am not persuaded that the UT failed to identify any *Robinson*-obvious point in the Ft-T's decision.

Result

[40] For the reasons given at paragraphs 7 to 25 of this opinion, I will sustain the respondent's third plea-in-law and refuse the petition. Had it been necessary to do so, and for the reasons given in paragraphs 26 to 39 of this opinion, I would have sustained the respondent's fourth plea-in-law and refused the petition. I shall reserve any question of expenses.