



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case Nos.: UI-2021-001694**  
**First-tier Tribunal Nos:**  
**HU/03157/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 07 December 2023**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**  
**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**M B**  
**(ANONYMITY ORDER MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Saifolahi, Counsel instructed by Magna Solicitors  
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

**Heard at Field House on Thursday 23 November 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. Although the First-tier Tribunal did not make an anonymity order, a precautionary order was made when the appeal was listed due to the health conditions of the Appellant's wife which are discussed in this decision. It is appropriate to continue that order for that reason. No-one shall publish or reveal any information, including the name or address of the Appellant or his wife, likely to lead members of the public to identify the Appellant or his wife. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

## **BACKGROUND**

1. The Appellant appeals against the decision of First-tier Tribunal Judge Bonavero promulgated on 27 May 2021 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 10 February 2020 refusing his human rights claim.
2. The Appellant’s human rights claim is based on his family life with his wife (N) who is a British citizen. She suffers from multiple health conditions. The Appellant is a national of Pakistan. He is unable to succeed in his application to remain with N in the UK within the Immigration Rules (“the Rules”) due to his immigration status (as an illegal entrant), and that he cannot satisfy the English language or financial requirements of the Rules. The Appellant can only satisfy the Rules if he meets paragraph EX.1(b) of Appendix FM to the Rules. This requires him to show that there are insurmountable obstacles to family life with N continuing in Pakistan.
3. The Appellant has had a previous appeal based on similar facts which was dismissed by First-tier Tribunal Judge Hanley in a decision promulgated on 29 November 2016 (“the Previous Decision”). Judge Bonavero took that as his starting point. However, he recognised that two issues required to be revisited, namely the credibility of the Appellant and N and N’s health conditions.
4. Having considered the evidence, Judge Bonavero reached the same adverse view of the credibility of the witnesses. He also concluded that there were no insurmountable obstacles to the Appellant’s family life continuing in Pakistan. He dealt briefly with Article 8 ECHR outside the Rules but found that removal of the Appellant would not be disproportionate. He therefore dismissed the appeal.
5. The Appellant appeals the Decision on four grounds as follows:  
Ground one: Flawed approach to “Devaseelan” assessment  
Ground two: Failure to assess relevant factors in the round.  
Ground three: Flawed approach to credibility assessment.  
Ground four: Flawed approach to reasonableness of return in light of Covid-19 pandemic.
6. Permission to appeal was refused by First-tier Tribunal Judge Ford on 5 July 2021 in the following terms so far as relevant:  

“.. 3. The Tribunal accepted that it should depart from a previous decision of the Tribunal as to the obstacles facing the Appellant and his wife in their integration in Pakistan in one respect only. Having seen a police report concerning the loss of his passport the Tribunal accepted that he had reported the loss of his passport to the authorities. But it could see no reason on the evidence to depart from the rest of the adverse credibility findings of IJ Hanley. The Tribunal did consider the up to date medical evidence concerning the medical conditions of the Appellant’s wife.

4. The grounds are not arguable. Devaseelan was applied correctly and the up to date evidence considered including the police report and medical evidence. There is no arguable material error of law.”
7. Following renewal of the application for permission to this Tribunal (on the same grounds), permission was granted by Upper Tribunal Judge Sheridan on 20 June 2022 for the following reasons:
  - “1. Para 12 of the grounds sets out a detailed list of factors that are arguably relevant to the difficulties the appellant’s wife may face in Pakistan. It is arguable that the judge (FtT Judge Bonavero) erred by failing to consider these cumulatively when assessing whether para. EX.1 of Appendix FM was satisfied.
  2. All grounds are arguable.”
8. We had before us an indexed bundle which included the documents relevant to the appeal, and the Appellant’s and Respondent’s bundles before the First-tier Tribunal. We also had the Appellant’s skeleton argument and Respondent’s review which were before the First-tier Tribunal. The Appellant has also made an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce further documents including updated medical evidence. Those documents become relevant only if we accept that there is an error of law in the Decision. We also had before us the Respondent’s Rule 24 reply dated 7 November 2023 which Ms McKenzie adopted in her oral submissions.
9. The matter comes before us to determine whether the Decision contains an error of law. If we conclude that it does, we must then consider whether to set aside the Decision. If we set aside the Decision, we must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.
10. Having heard submissions from Ms Saifolahi and Ms McKenzie, we indicated that we would reserve our decision and provide that in writing which we now turn to do.

## **DISCUSSION**

11. At the outset of the hearing, Ms Saifolahi indicated that she intended to make submissions on the first three grounds. Sensibly, she did not pursue the point about the Covid-19 pandemic given the changed situation since 2020. Ms Saifolahi also did not pursue a point made at [14] of the grounds (under the second ground) that “it is hard to envisage any Judge deeming relocation to Pakistan viable for a white British woman faced with the same health complications as [N]”. The inference from that submission is that the Judge was racially biased towards the Appellant and N. Such submissions are to be deprecated and Ms Saifolahi (who did not draft the grounds) was quite right not to pursue such an objectionable and unwarranted submission.

12. Thereafter, Ms Saifolahi took the first and third grounds together and then focussed her submissions on the second (which was the main basis of the grant of permission to appeal). We follow the same approach.
13. Ms Saifolahi fairly and sensibly accepted that she could not argue (as appeared to be suggested in the pleaded grounds) that the Judge had not considered the second issue which he had identified as potentially justifying a departure from the Previous Decision. She accepted that the Judge had “attempted” to consider and reach a conclusion on N’s medical conditions. She also submitted that the Judge ought to have considered whether the Appellant was simply being unhelpful rather than purposively evasive on what she said was (as set out in the pleaded grounds) an uncontroversial issue.
14. We can deal with these two grounds quite shortly. The Judge properly directed himself at [17] to the “Devaseelan” guidelines. Thereafter, although he identified that the issues at the time of the Previous Decision and at the hearing before him were “essentially identical”, he recognised that there were “two main areas that require[d] attention” ([20]). Those were the Appellant’s and N’s general credibility and N’s medical condition.
15. Dealing first with credibility, Judge Bonavero accepted that there was a document which “[lent] some credence to the appellant’s claims” regarding theft of his passport. He took that into account ([22]). However, as he there pointed out, Judge Hanley had given many reasons for concluding that the Appellant was not credible. This was just one. Judge Bonavero went on to say the following:

“23. I should also note in this regard that my own impression of the appellant’s evidence corresponds with that of Judge Hanley. He appeared to be unwilling to answer straightforward questions, even when they were put to him several times. In particular, I asked him on three occasions whether he would be able to work in Pakistan, and on each occasion he did not answer, but instead spoke about unrelated matters. Even when his own Counsel put the same question to him in re-examination, he still did not answer it. All in all, I am led to the same conclusion as Judge Hanley, which is that I can place only very limited weight on the appellant’s evidence.”
16. The pleaded grounds submit that “there was plainly no reason for A to be evasive about this” as the Appellant had given evidence that he spent about 90% of his time caring for N which it is said was corroborated by the medical evidence. Ms Saifolahi also made the point that the Appellant is not highly educated and that this may have played a part in the way he gave his evidence.
17. We begin by disagreeing that the issue which Judge Bonavero identified at [23] of the Decision was uncontroversial. The central issue in this appeal is whether the Appellant and N could live in Pakistan. Whether they could do so might include the issue whether the Appellant would be able to find employment there. His reluctance to answer that question could therefore demonstrate evasiveness. Further, this was given by Judge Bonavero as just one example of general unwillingness to answer

questions. Judge Bonavero saw the Appellant giving evidence and this Tribunal should be slow to interfere with the findings of a Judge who has formed a view from direct observation of a witness giving evidence.

18. It was not suggested that the Appellant's lack of education would explain his unwillingness to answer questions. It forms no part of the skeleton argument before Judge Bonavero. It was not suggested that a lack of education rendered him a vulnerable witness. Although the Appellant says in his first statement that he was only educated to a basic standard, he also said that he had trained and worked as a goldsmith in Pakistan. He has worked in the UK as he admits in that statement.
19. In any event, as Judge Bonavero pointed out at [22] of the Decision, his starting point was the adverse credibility findings reached by Judge Hanley. Although he took into account that one of the reasons given by Judge Hanley could not be sustained given the documentary evidence concerning the theft of the Appellant's passport, he was fully entitled to adopt the remaining findings and conclusion as to the credibility of the Appellant.
20. For the foregoing reasons, the first and third grounds do not disclose any error of law in the Decision.
21. Judge Bonavero's approach to the evidence about N's medical condition forms part of the second ground which was the reason given for the grant of permission to appeal and the main focus of Ms Saifolahi's submissions.
22. At [12] of the grounds is set out a lengthy list of factors which it is said "ought to have been borne cumulatively in mind". In discussion with Ms Saifolahi, we grouped those as follows:

Factual background: (i) and (ii) (that N came to the UK from Pakistan aged twelve and has not been to Pakistan for over twenty years).

N's medical conditions: (iii) to (xv) (in broad summary, those are residual disabilities from childhood polio, that she requires an adapted car and assistance for mobility, a narrowed food pipe, cellulitis which affects mobility and has required hospital admissions, asthma which has required hospital admissions and required her to shield during the pandemic, lymphodema which gives her severe pain in her leg, and depression/anxiety).

N's disability status and treatment: (xvi) as well as (xi) and (xiii) to (xv). Again, in broad summary, N is in receipt of disability benefits, is cared for by the Appellant for most of the time and receives NHS treatment. The point is made that N would not get disability benefit or NHS treatment in Pakistan.

Situation in Pakistan: (xvii) to (xix): the Appellant said that his family had cut ties with him due to his marriage to N. The Appellant and N also relied on background evidence about the situation for disabled people in Pakistan. N said that she was ostracised even as a child due to her disability.

23. Ms Saifolahi realistically conceded that the Judge had taken into account all the factors listed. We agree. The Judge clearly identified that N is a British citizen ([3]). He considered the case on that basis. As we come to below, the Judge considered the evidence about N's medical conditions at [24] to [27] of the Decision. Her medical conditions are summarised at [4] of the Decision. At [27] to [29] of the Decision, the Judge considered the availability of treatment in Pakistan. The Judge did not accept that the Appellant and N would not have family support in Pakistan ([30]). He there took account of the fact that N would not be able to claim benefits in Pakistan. At [31] of the Decision, the Judge considered the background evidence about the treatment of those with disabilities in Pakistan. He accepted that the reports relied upon "paint a bleak picture" and that "there is regrettably still significant stigma".
24. Ms Saifolahi made clear in her submissions that the real complaint is that pleaded at [8] of the grounds, namely that Judge Bonavero failed to consider all matters cumulatively. It is submitted that he had regard to individual considerations and reached conclusions in relation to each but had failed to consider the combined effect and whether that would reach the relevant threshold.
25. Ms Saifolahi referred us to various sentences in the part of the Decision dealing with the obstacles to family life continuing in Pakistan which she said supported that submission. Those were as follows:
- Paragraph [24]: the Judge said that "it [was] not suggested by the appellant that [N]'s mental health problems in themselves lead to insurmountable obstacles to her relocation to Pakistan."
- Paragraph [27] (dealing with N's cellulitis): "I have no evidence before me to show that this condition could not adequately be managed in Pakistan".
- Paragraph [28] (summarising in relation to the medical evidence): "I conclude that there is nothing specific to [N]'s healthcare requirements that would amount to an insurmountable obstacle to her living in Pakistan".
- Paragraph [30]: "The appellant has therefore not proved to the balance of probabilities that he and his wife would be in such financial difficulties there as to amount to an insurmountable obstacle".
26. There are the following difficulties in the way of Ms Saifolahi's submission.
27. First, and most importantly, at [33] when reaching his conclusion, the Judge recognised that there was only one issue which was whether the Appellant and N "would face very serious hardship". He there said quite clearly that he had looked "at all the evidence in the round" when reaching his conclusion that there were no such insurmountable obstacles. That is the conclusion on this issue which takes into account therefore what precedes it.
28. Second, even if we were to accept Ms Saifolahi's submission that some sentences taken in isolation suggested that the Judge was reaching individual conclusions on some aspects (which we do not), there are other

sentences which very clearly point the other way. At [31] of the Decision when dealing with the treatment of disabled persons in Pakistan, Judge Bonavero said in the final sentence that “[t]hese issues will plainly pose a challenge to [N], and [he gave] them weight in [his] assessment”. Similarly, at [32] of the Decision when dealing with the submission about the impact of N shielding during the pandemic, the Judge said that he had not seen any medical evidence that N was required to shield or any supporting a submission that she could not travel to Pakistan. He could not “therefore give this factor any significant weight”. Those references clearly indicate that the Judge was making an overall assessment leading to the conclusion reached at [33] of the Decision.

29. Third, in any event, we do not consider that the references to which Ms Saifolahi took us support a submission that the Judge was there considering factors individually rather than cumulatively. The sentence at [24] of the Decision is referring to the way in which the Appellant was putting his case. The sentence at [27] refers to the conclusion about what the evidence showed. The sentences at [28] and [30] are simply findings made about the Appellant’s case and the evidence relating to certain factors relied upon.
30. Overall, we consider that the Appellant’s second ground does not disclose an error in the Judge’s approach. The Judge said that he was considering all the evidence in the round when reaching his conclusion on the test which applied. In reaching that conclusion, he needed to make findings about the evidence in relation to certain factors relied upon. That is what he was doing in the sentences to which we were referred. Ultimately, the Appellant is cherry-picking sentences which suit his argument but ignoring others and failing to consider this section of the Decision as a whole.
31. For those reasons, ground two does not disclose any error of law.

## **CONCLUSION**

32. We therefore conclude that the Appellant has failed to identify an error of law in the Decision, and we therefore uphold it with the result that the Appellant’s appeal remains dismissed.
33. Ms Saifolahi mentioned when addressing us in relation to disposal if we were to find an error that the Appellant has now succeeded in remaining in the UK for over twenty years (unlawfully) and may be able to satisfy the Rules in relation to his private life. If that is so, it is of course open to him to make a further application to the Respondent.

## **NOTICE OF DECISION**

**The Decision of Judge Bonavero promulgated on 27 May 2021 did not involve the making of an error of law. We therefore uphold the**

**Decision with the consequence that the Appellant's appeal remains dismissed.**

L K Smith  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

30 November 2023