Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/07647/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 November 2017	**On 04 December 2017**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

MK
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Adewoye, of Prime Solicitors
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Mr MK (Appellant) appealed against a decision of Judge of the First-tier Tribunal Anstis (FtJ), promulgated on 30 January 2017, dismissing his protection and human rights appeal against the Respondent's decision of 7 July 2016 refusing his protection and human rights claims. In an 'error of law' decision dated 6 July 2017 I concluded that the FtJ materially erred in law in his assessment of the availability of the internal relocation option available to the Appellant, his partner and their child. The hearing was adjourned to enable further evidence to be provided in respect of the issue of internal relocation. The principle factual findings of the FtJ were not challenged and have been retained. The Tribunal has received further documentary evidence,

primarily in the form of an expert report from Gil Daryn, dated 28 August 2017, further statements from the Appellant and his partner, articles on the position of illegitimate children in Pakistan and marriage between Sunni and Shia Muslims, and a NADRA (National Database and Registration Authority) publication on child registration. At a resumed hearing on 20 November 2017 I heard further evidence from the Appellant and received copies of emails sent by the Appellant to the Home Office and the Pakistani High Commission in London.

Background

2. The Appellant is a national of Pakistan, date of birth 12 July 1978. He entered the UK as a student on 5 November 2011 and was granted further leave to remain as a Tier 4 (General) Student until 30 September 2014. He made an application for further leave to remain outside of the immigration rules on the 22 October 2014. This application was refused on 4 August 2015 on the basis that the Appellant fraudulently obtained his TOEIC certificate using a proxy test taker. He was detained on 21 October 2015 and claimed asylum on 26 October 2015. The Appellant's partner, RMA, also a national of Pakistan, arrived in the UK on 18 December 2015 with entry clearance as a student. At the date of the appeal before the First-tier Tribunal the Appellant's partner had made an asylum claim that was yet to be determined. The Appellant was invited to an asylum interview on 9 January 2016 but failed to attend without providing a reasonable explanation and his asylum claim was withdrawn on 6 April 2016. The Appellant then lodged further submissions on 30 June 2016 leading to the refusal of his protection claim on 7 July 2016.

3. The Appellant claimed that he would be at risk of serious harm from his partner's family in Pakistan as a result of his relationship with her. He is a Shia Muslim and she is a Sunni Muslim. They also belong to different castes; his being Khan (Pathan), hers being Siddiqui (Sidiki). They are in an unmarried relationship and have a young child born out of wedlock in September 2016. The Appellant maintained that there was historical animosity between the two religions and castes and that, as their child was born out of wedlock, he will be regarded as a bastard and would not be accepted by either family. The Appellant feared that he would be killed on the basis that he had dishonoured both his family and his partner's family. Both he and his partner (whilst in the UK) had received death threats from his partner's family in Pakistan. He maintained that he and his partner would be unable to rent a property in Pakistan as any landlord would ask them if they were married. They claimed that they could not get married in Pakistan and that their child would be unable to obtain an ID or register for school.

4. The Respondent was not satisfied with the evidence provided by the Appellant and found his account incredible. The Respondent considered the country information and guidance document (CIG)

'Pakistan: Interfaith Marriage', dated January 2016, and the CIG document entitled 'Women Fearing Gender-Based Harm and Violence', dated February 2016. Whilst noting that sex outside of marriage was forbidden there was no evidence before the Respondent that any complaints had been laid before a court against the Appellant or his partner and there was no evidence that they were not free to marry. The Respondent concluded that the Appellant and his partner would receive sufficient protection from the Pakistan authorities and that the internal relocation alternative was available to them.

The First-tier Tribunal decision

5. The First-tier Tribunal heard evidence from the Appellant and from his partner. She maintained that her father and brothers would try to find out if she and the Appellant returned to Pakistan. Although she said her father was "not powerful or influential as such" there were ways of paying people money or using links and her father "… would definitely try finding out from friends or use any means possible." She claimed they could not move to a different city because they would need to find somewhere to rent and would need documents and that "… the people in the area would soon find out we belong to different sects so it is not going to be possible. People will not tolerate this."

6. The FtJ did not find the Appellant's evidence to be altogether satisfactory. He noted that the Appellant's asylum claim was only made after he had been detained, and that the basis of his initial asylum claim (before his partner arrived in the UK) was not even arguable. The FtJ took a dim view of the Appellant's failure to attend his asylum interview and did not consider the Appellant's explanation (that he had changed address and forgot to inform the Respondent) to be a good one. The FtJ noted the Respondent's view that the Appellant had used a proxy tester to obtain his English language qualification but did not make any formal findings on this matter.

7. Despite initially lodging a protection claim that was "a bad one" the FtJ considered that the claim could become good because of events arising since it was lodged. He noted the absence of any dispute that the Appellant and his partner were in a genuine and subsisting relationship, that they had a child together, that he was a Shia Muslim and she was a Sunni Muslim, and that they came from different castes. Although the FtJ did not accept that several translated emails containing threats and screenshots of mobile phones showing telephone calls from Pakistan by themselves added to the Appellant's credibility, he did attach weight to the evidence given by the Appellant's partner. The FtJ found that her credibility as a witness was not directly affected by the problems that had been identified with the Appellant's credibility. The FtJ therefore accepted that the Appellant's partner had been subject to threats from her brother and her father. The FtJ concluded that the Appellant, his partner and their child would be at risk in her home area given the existence of the threats from her family.

8. He then turned to the questions of sufficient of protection and internal relocation. The FtJ noted that Pakistan was a very large and populous country and, as the Appellant's partner herself accepted, her family had no special influence or privileged position in Pakistan. The FtJ noted, with reference to the Respondent's background information documents, that internal relocation was, in general, possible and effective and that there was, in general, a sufficiency of protection available from the authorities. He referred to the reported decisions in *AW (sufficiency of protection) Pakistan* [2011] UKUT 31 (IAC), *NA and VA (protection: Article 7(2) Qualification Directive) India* [2015] UKUT 00432 (IAC) and *KA (domestic violence-risk on return) Pakistan CG* [2010] UKUT 216 (IAC), and noted, with reference to *KA*, that in general a risk to a woman facing an honour killing was likely to be confined to tribal areas such as the North-West Frontier province. The Appellant's partner did not come from this province. The FtJ did not accept that the partner's family would be able to track her and the Appellant as a result of police corruption because her family having no special influence.

9. At [56] the judge stated,

> I accept that the police in Pakistan are liable to corruption, but the Appellant's case on this point is tantamount to saying that any family could track down a returning member within Pakistan, and I do not accept that, since if that were to be the case there would be nothing in the general principle (outlined above) that internal relocation and sufficiency of protection would generally be available.

10. At [57] the judge stated,

> I accept that the position is not entirely clear, and that another judge on another occasion may form a different view, but on what I have heard I consider that the Appellant, his partner and their child could move to an area of Pakistan were either they could not be found by her family or they would be sufficiently protected by the authorities. It follows that the Appellant's asylum appeal must be dismissed.

The grounds of appeal and the 'error of law' decision

11. The grounds took issue with the FtJ's approach to the question of internal relocation. It was submitted that the FtJ's reasoning at [57] was inadequate and that he made a sweeping remark about internal relocation which was at variance with the evidence provided at the hearing. The grounds noted that *KA* related to a female victim of honour crimes and that there was no guidance on the position of male victims of honour crimes. The grounds made several references to background information concerning attacks in various parts of Pakistan on victims of honour crimes.

12. At the outset of the 'error of law 'hearing I indicated to the Presenting Officer my concern that the FtJ appeared to conflate the test in

respect of the availability of a sufficiency of protection with the test for the availability of an internal relocation alternative, and that he failed to take into account the specific factors identified by the Appellant said to render the internal relocation alternative unavailable, i.e. his mixed relationship with his partner and the fact that his child was born out of wedlock. The Presenting Officer accepted that these factors appeared to play no part in the FtJ's assessment of the availability of internal relocation. I indicated that I would allow the appeal on the basis that the FtJ failed to adequately assess the availability of the internal relocation alternative and that the matter would be adjourned to enable further evidence to be provided to the Upper Tribunal in respect of the internal relocation alternative.

13. The FtJ found that the Appellant, his partner and their child would be at risk in their home area. Such a finding normally entails an absence of sufficient protection by the authorities in the home area. The FtJ proceeded to then consider internal relocation within the framework of, and by reference to, the threats from the partner's family i.e. that the Appellant, his partner and child would continue to be at risk of being the subject of an honour killing wherever they went in Pakistan. The FtJ had, however, already found that the family of the Appellant's partner were not powerful or influential. There was therefore no real risk that the agents of persecution would be able to locate the Appellant and his family if they relocated. The FtJ should therefore have considered whether it was unreasonable or unduly harsh to expect the Appellant, his partner and child to move to another part of Pakistan given that they are unmarried, that he is a Shia Muslim, she is a Sunni Muslim, and in light of the fact that they are from different castes and that they have a child born out of wedlock.

Resumed Hearing

14. The hearing was scheduled to be resumed on 1 September 2017 but on that date the Appellant's representative provided a 76-page bundle, including the new expert report. This was in breach of directions I issued relating to further evidence and the Presenting Officer was unable to properly consider the further evidence on the day of the hearing. The hearing was therefore adjourned to 20 November 2017. The Respondent had already provided, within the terms of my directions, the CIG report 'Pakistan: interfaith marriage', dated January 2016.

15. At the resumed hearing, the Appellant provided some further documentary evidence in the form of emails to the Home Office requesting documents to enable him to get married, and emails to the Pakistani embassy on 23 October 2017 requesting information on the procedure and documents required to register his child born out of wedlock. There had been no reply from the Embassy. The Appellant additionally provided a NADRA 'Frequently Asked Questions' webpage which indicated that the marital status of at least one of the parent's

ID card had to be updated to “married” in order to process a child’s application for a NICOP (National Identity Card for Overseas Pakistanis) registration document.

16. In his oral evidence, the Appellant claimed he was unable to register his child in Pakistan or the UK without being married. He claimed that if he sought to register his child he would have to admit to adultery. When I asked the Appellant why he could not undertake a religious marriage in the UK he said he did ‘make an effort’ but that his partner’s papers were with the Home Office. He additionally claimed that an Imam told him verbally that he could not marry in the UK, although there was no documentary evidence in support of this assertion. The Home Office had, apparently, replied his email requesting a scanned copy of his passport, indicating that it would take 4 to 6 weeks “to work on it”, and that there was, as yet, no answer. The Appellant said he tried once to have an Islamic marriage in the UK in May 2016. He did not try again as he and his partner belonged to different faiths and because they could not get married without the consent of her parents. The Appellant accepted that an Islamic marriage in the UK would be accepted by the Pakistan authorities. The Appellant stated that he required witnesses in a court in Pakistan to get married but his relatives disowned him. He claimed that if a priest knows he has a child outside marriage he won’t perform the marriage.

17. Having heard the oral evidence, and following the oral submissions from both representatives, I reserved my decision.

Findings and reasons

18. The FtJ found that the Appellant and his partner and child would be at risk of serious ill-treatment in their home area. This risk emanated from the Appellant’s partner’s family and was based on perceived dishonour to the family. The FtJ found as a fact that the wife’s family were not powerful or influential. While I accept that honour killings can occur throughout Pakistan, that men can also be subject to honour killings, that the Pakistan police are corrupt and that they may even aid and abet honour killings, and that corrupt NADRA officials may be manipulated with relative ease and for nominal amounts of money, given the unchallenged factual findings made by the FtJ, and in the absence of any described mechanism by which the partner’s family would become aware that she and the Appellant had returned to Pakistan, there is no real likelihood that the partner’s family would have any reach or influence outside their home area. There is therefore no real risk that her family would be able to locate the Appellant and his partner and child if they relocated to another part of the country.

19. The issue I must now determine is whether it would be unreasonable or unduly harsh to expect the Appellant and his partner and child to relocate in light of their particular circumstances, specifically, the fact

that they are in a mixed Shia/Sunni relationship, that they are from different castes, and that they, at the moment, have a child born out of wedlock.

20. The Appellant's produced an expert report authored by Gil Daryn. No issue was raised by Mr Duffy in respect of the expert's standing. The expert noted that there were no laws or government policies that discriminate against Shi'ites in Pakistan, and there were no legal restrictions on freedom of religion for Shi'ites, who were estimated to comprise 10 to 15% of the Muslim population of Pakistan. The expert however maintained that the culture of religious intolerance was pervasive, and that discrimination and violence against Shi'ites was widespread. It is claimed that these attacks targeted ordinary Shi'ite individuals and that anti-Shi'ite hate speech permeated all sectors of Pakistani society. He referred to military groups that, despite being banned, operated with virtual impunity throughout Pakistan, and that Shi'ite professionals and officials including doctors, lawyers, politicians, prominent business people and local traders were also targeted and killed.

21. While I don't doubt that there is discrimination and violence against Shi'ites in Pakistan, the expert does not assess, other than to assert in a general and unparticularised manner that discrimination and violence is widespread, the number of attacks on Shi'ites in respect of the size of the population or the probability of such attacks occurring. While any attack on an individual or group based solely on their religion or ethnicity is to be abhorred, the evidence contained in the expert report does not indicate that the level and prevalence of violence directed to Shi'ites is such as to render an individual who is Shi'ite, or a Sunni Muslim in a relationship with a Shi'ite, open to a real risk of persecution.

22. The expert stated that Sunni and Shi'ite marriages are perfectly legal in Pakistan but that, although quite common until the 1980s, they are currently very rare. The expert stated that, "… The objective evidence demonstrates that despite being legal and permitted, Sunni-Shi'ite marriages are still quite problematic, rather un-accepted socially, and might pose a grave risk", and that this was particularly so when the respective families are not in favour of the match. The expert however does not provide any reference or support for his conclusion that Sunni-Shi'ite marriages "might" pose a grave risk. In the absence of any specific supporting evidence, I am not persuaded, having considered the evidence on the lower standard of proof, that the Appellant or his partner or their child would face a real risk of persecution based on the mixed marriage. I note the absence of any reference to serious discrimination faced by those in Sunni-Shia marriages in the CIG report on Interfaith Marriage, January 2016. Although I only need to be persuaded that it would be unreasonable or unduly harsh for the Appellant and his partner and child to relocate (they do not have to persuade me that they would face persecution in the place of relocation), I'm nevertheless satisfied, for the reasons

given above, that it would not be unreasonable for them to live in another part of Pakistan even though this means they may face some degree of discrimination.

23. Despite being specifically asked to comment on the effects of the Appellant and his partner being from different castes, the expert does not engage with this at all. There is simply no reliable background evidence indicating that the Appellant being Khan (Pathan), and his partner being Siddiqui (Sidiki), would expose them to any significant discrimination, let alone persecution. While the January 2016 CIG report does indicate that marriage outside of one's own ethnic community is generally disapproved of by most Pakistani families, the report does not support the Appellant's claim that it would be unreasonable or unduly harsh for him and his partner to relocate to another part of Pakistan.

24. The Appellant additionally contends that he and his partner would be unable to relocate elsewhere in Pakistan because their child would be regarded as being illegitimate and that this would either expose the Appellant and his partner to accusations of adultery, or would prevent their child from being registered with NADRA.

25. Although the expert states that, according to Islamic laws, adultery is a punishable crime and those who committed fornication could be sentenced to death, he does not refer to the manner in which the Islamic laws are actually implemented in Pakistan. Moreover, there is simply no evidence that any allegation of adultery has been lodged with the police or courts against the Appellant or his partner.

26. I accept that in August 2017, the Appellant emailed the Home Office indicating that his partner was recently granted 30 months LTR (a point not brought to my attention or further commented upon at the hearing) and that Weybridge Registration Centre indicated that the Appellant should contact the Home Office to obtain a scanned copy of his passport to enable them to get married. Despite an automatic email response indicating that the Home Office aimed to provide a response within 20 working days, no response was provided in the Appellant's bundle. At the hearing, the Appellant claimed that the Home Office did reply explaining that it would take 4 to 6 weeks to "work on it", and that there was, as yet, no answer. This reply was not contained in the bundle. In any event, it appears that the Appellant and his partner could get legally married in the UK once a scanned copy of the Appellant's passport has been provided. It was not suggested at the hearing that there was any reason why the Home Office would not provide the scanned copy. I therefore find that the Appellant is likely to be able to enter a civil marriage with his partner in the UK.

27. But even if this was not the case and there was some impediment to the Appellant being able undertake a civil marriage, there was no satisfactory evidence that the Appellant would be unable to undertake

an Islamic marriage in the UK that would be recognised by the Pakistani authorities, and no evidence that a Nikah obtained in the UK would not be accepted in Pakistan. The Appellant did not produce any evidence that he had been refused an Islamic marriage in the UK. I appreciate that there is no requirement for corroborating evidence in this jurisdiction, but I am entitled to draw an appropriate inference from the absence of evidence that one would reasonable expect to be available. If the Appellant had approached an Imam in order to undertake an Islamic marriage in the UK, and the Imam refused to perform the marriage, I would have reasonably expected to see evidence of this, including reasons for the refusal. In rejecting the Appellant's claim to have attempted to obtain an Islamic marriage in the UK I take into account that he is someone the First-tier Tribunal found to be an incredible witness.

28. There is no evidence before me indicating that, in order to undertake a marriage that will be recognised by the Pakistani authorities, a Pakistani national must disclose whether or not they have children. The Appellant claimed he would have to lie about having a child to get married. There is however no independent and reliable evidence that the Appellant or his partner will be asked whether they have children in order to get married, either in Pakistan or in respect of an Islamic marriage conducted in the UK. In his statement and oral evidence, the Appellant additionally claimed that he could only get married with the consent of his wife's parents, that he would need witnesses who were relatives, and that the authorities would become 'suspicions' and start asking questions if there were no witnesses which might disclose the existence of his child. There is however no independent and reliable evidence that the consent of his partner's parents is needed or that witnesses must be relatives and his assertion relating to the absence of witnesses is unsupported by any background evidence and is unduly speculative. In the absence of such evidence I am not satisfied the Appellant is unable to get married either in the UK or in Pakistan.

29. I accept that, in order for a Pakistani child to obtain a NICOP registration document, one of the parent's ID cards must be updated to "married." The NICOP document however appears to relate to Pakistanis living outside Pakistan. There is no evidence indicating that this document is necessary to enable a child born to two Pakistani nationals outside Pakistan to re-enter Pakistan. Even if this was the case, if the Appellant and his partner were to marry in the UK, which I have found they can do, the Appellant or his partner would be able to update their own ID cards which would allow for their child to obtain the NICOP document. No details were provided in either the expert report or in the other documents in the Appellant's bundle as to the requirements needed to obtain a Child Registration Certificate (CFC). The expert specifically noted that, according to NADRA's website, a marriage certificate is not listed amongst the documents that parents need to submit as part of the application process for a Juvenile Card (ID for under 18) for their children. In any event, I have already concluded that there is insufficient evidence that the Appellant cannot

marry his partner in the UK and that this marriage would not be recognised by the Pakistani authorities either through their embassy in the UK or in Pakistan.

30. The Appellant relies on an Internet forum discussion, downloaded from 'www.therevival.com' relating to Islam and illegitimate children, where an individual, based in Leicester, UK, considered that a child born before a man marries the mother will still be considered a legitimate even after the marriage. No further details were provided to indicate the authoritative nature of this pronouncement. In any event, the pronouncement says nothing about how the law in Pakistan operates, or whether the child would be entitled to an identity card. I therefore find this evidence of little probative value when determining the likelihood of whether the child will be able to legalise his status through NADRA and whether the child would still be considered legitimate.

31. I have considered the likely impact on the Appellant and his family having cumulative and holistic regard to the factors identified by him that he claims renders unreasonable the internal relocation option. I have found that there is no real risk that the Appellant and his partner will be unable to marry, either in the UK or Pakistan, and that once married, there is no real risk that the Appellant's child would be unable to obtain the required identity document that will enable her to access all services in Pakistan. In circumstances where the Appellant and his partner are validly married, and their daughter has a valid registration/identity card, there is no real risk that the child will be regarded as illegitimate or that it would become public knowledge that the child was born before the marriage, and no real risk that the Appellant or his partner would be exposed to any prosecution on the basis that they committed adultery.

Notice of Decision

I re-make the decision of the First-tier Tribunal by dismissing the appeal.

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

Unless and until a Tribunal or court directs otherwise, the Appellant granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 1 December 2017

Upper Tribunal Judge Blum