



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/22419/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 11<sup>th</sup> June 2014

Determination Promulgated  
On 25<sup>th</sup> June 2014

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

USMAN USMAN PERVEZ

Respondent

**Representation:**

For the Appellant: Mr Jarvis  
For the Respondent: Mr Ahmed

**DETERMINATION AND REASONS**

1. This is the Secretary of State's appeal against the decision of Judge Adio made following a hearing at Hatton Cross on 2<sup>nd</sup> January 2014. Judge Adio allowed the Claimant's appeal under Article 8 of the ECHR. The Secretary of State sought and was granted permission to appeal that decision and, on 21<sup>st</sup> March 2014 Deputy

Upper Tribunal Judge Lewis set it aside. A copy of Judge Lewis's determination is appended.

2. Judge Lewis directed the matter to be heard at Field House on 30<sup>th</sup> April 2014 before him. However on that day it was not possible for him to determine it and the matter was transferred to me. It was however adjourned because the Claimant's representative informed me that he was in hospital and all of the documentary evidence upon which he intended to rely was in the possession of the Claimant rather than instructing solicitors.
3. Thus it came before me on 11<sup>th</sup> June 2014.

### **The Hearing**

4. Usman Pervez gave brief oral evidence. His case is based upon his having been involved in a road traffic accident in the UK in January 2012. He was knocked off his motorbike and, he says, received injuries which required a mechanical valve replacement in his heart. The consequence of the operation is that he will have to take anticoagulant medication for the rest of his life in order to reduce the risk of heart attack or stroke. He says that his parents and family are not wealthy and would not be able to afford the medication. Neither does Pakistan have the national healthcare system and medication which he would need.
5. In oral evidence he also said that he suffers from depression, for which he is given medication and attends appointments with a therapist. He has produced a letter from his GP which confirms that the Claimant consulted them recently complaining of feeling tired and depressed.
6. So far as the affordability of medication in Pakistan is concerned he relies on a report from Dr Habib Aslam Gaba dated 3<sup>rd</sup> June 2014 which estimates that the "total average cost will be nearly minimum" 95,000 rupees per month which Mr Pervez said equated to about £600. He has also provided a service certificate from his father's employer in Saudi which states that he earns 1,950 rials per month which the Claimant said equated to £280. His mother does not work and his father has to pay for the education of his two sisters and brother.
7. Even if it was affordable, the Claimant said that his life would be at risk in Pakistan because of the lack of emergency services.
8. It was pointed out to him that in his original application form the Claimant said that he received £400 per month from his parents from which he pays £200 rent. Mr Pervez said that his father was no longer sending him money and he was dependent upon his friend Rashid who supported him and who could be available to give evidence in the future if it was required.

## Submissions

9. Mr Jarvis submitted that the Claimant's evidence should be approached with caution given the discrepancies between what was said in the original application form and his present evidence. His parents had given him £8,000 for his studies in the UK and there was no corroborative evidence from them nor from Rashid as to the Claimant's present financial arrangements. He reminded me that even in his initial appeal before Judge Adio he had not been found to be wholly credible because he had wrongly told the judge that warfarin was not available in Pakistan. He relied on the decision in Akhalu (Health claim; ECHR Article 8) Nigeria [2013] UKUT 400 and in particular paragraph 46 of that determination which states:

"Put another way, the consequences of removal for the health of a Claimant who would not be able to access equivalent healthcare in their country of nationality as was available in this country, are plainly relevant to the question of proportionality. But when weighed against the public interests in ensuring that the limited resources of this country's health service are used to the best effect for the benefit of those for whom they are intended, those consequences do not weigh heavily in the Claimant's favour but speak cogently in support of the public interests in removal."

10. In KH (Afghanistan) v SSHD [2009] EWCA Civ 1354 the Court of Appeal stated:

"Although Mr Jacobs relied on Article 8 as well as Article 3, he realistically accepted that it would be a very rare case which could succeed if it failed the Article 3 threshold."

11. Mr Ahmed submitted that the Claimant had given credible and consistent evidence. It was not implausible that the situation so far as the family's finances were concerned might have changed since the application for further leave to remain had been made in 2012. His parents had been able to provide financial support in the past but were no longer able to do so.
12. In the reasons for refusal letter the only issue taken by the Secretary of State was in relation to medical treatment in Pakistan. It was speculative for the Presenting Officer to rely on the costs to the UK of the Claimant's treatment since there was no evidence at all of what those costs would be. He relied on the decision in Okonkwo (Legacy - Hakemi; health claim) [2013] UKUT 00401, which involved a kidney transplant, the success of which depended on the continued supply of medication.
13. The supply of appropriate medication in Pakistan was compromised by the fact that, as outlined in Dr Gaba's report, the weather in Pakistan was hot which made the blood flow quicker and "it's not right for any mechanical valve patient". Furthermore there was the risk of counterfeit medicine and problems in accessing emergency care. The roads in Pakistan were very dangerous.

## Findings and Conclusions

14. I did not find Mr Pervez to be a credible witness. He initially maintained that warfarin was not available in Pakistan when, on the unchallenged findings of the First-tier Judge, it is. The judge also found that there was no satisfactory evidence that valve replacement treatment or checkups would not be available to him there.
15. Neither do I accept that the Claimant would be unable to afford the treatment. The clear evidence in his application made on 28<sup>th</sup> July 2011 was that he was being given £400 per month from his parents. From that he paid £200 per month rent. There is no evidence from them that they are unable or unwilling to pay for treatment in Pakistan. The affidavit from his mother is entirely silent on the point. His parents have paid £8,000 to finance his studies here from 2010. I conclude they have the means to pay for his treatment in Pakistan and there is no indication whatsoever that they would not be willing to do so.
16. So far as the report from Dr Gaba is concerned it advises him to:

“Go forth and get your treatment in the UK”,

and it is clear that he has been asked to prepare his report in order to support the application to remain in the UK. He makes sweeping statements, e.g.:

“In event of any bleeding native doctors have no knowledge that how to treat a patient of automated valve so in case of any wrong medication can induce destruction.”

It is hard to understand what is meant by this. Furthermore he refers to the Claimant’s condition as being:

“A little extra critical because you suffer liver and depression problems as easily.”

No mention was made of any liver problems today.

17. The Claimant has been in the UK since 2010 and came for a temporary purpose. He has established some private life here no doubt, but in the knowledge and expectation that he would be returning to Pakistan.
18. Removal would be an interference with his private life but lawful since he has no basis of stay and in pursuant of a legitimate aim.
19. It would also be proportionate. I have no doubt that the Claimant has suffered ill health since his road traffic accident in the UK. Whilst the causal link between the accident and the valve replacement eight months later was not initially challenged by the Secretary of State, I observe that there is no proper corroborative evidence in the medical reports that the accident caused the heart problem, but in any event that is not material. The Claimant is prescribed a common anti-coagulant to obviate the risk of future heart problems which is available in Pakistan. This is far from being one of

those rare cases where an Article 8 appeal could succeed which has failed in relation to Article 3.

**Decision**

20. The original judge erred in law and his decision has been set aside by Designated Judge Lewis. It is remade as follows. The Claimant's appeal is dismissed.

Signed

Date

Upper Tribunal Judge Taylor