Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02797/2015

THE IMMIGRATION ACTS

Heard at: Field House	**Decision & Reason Promulgated**
On: 18 December 2018	**On 9 January 2019**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MA
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Fitzsimons, instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 14 May 1974. He arrived in the UK on 11 July 2009 on a visit visa valid until 24 December 2009 and overstayed. He claims to have returned to Pakistan in June 2014 and to have come back to the UK in December 2014. On 4 January 2015 he was arrested whilst attempting to fly to Northern Ireland and was served with removal papers as an overstayer. On 8 January 2015 he claimed asylum. His claim was refused on 12 February 2015.

2. The appellant's claim is based on events that occurred during his visit to Pakistan from June to December 2014. He claims to have been arrested by five or six police officers in July 2014 when walking with friends in an outside garden near his home. His friends were also arrested. He was blindfolded and taken to a police station and was detained for seven or eight days. He was asked whether he knew some men and whether he had links to any organisations. He told the police that he did not know anything. He was ill-treated and has retained scars as a result. On the day of his release they left him on the side of a street as they believed him to be dead. He was found by some people and taken to a clinic where he was given stitches. He contacted his brother who picked him up and took him to his sister's house in Jhelum because the police had been coming to his house in Rawalpindi and searching his belongings. He stayed in Jhelum for six months and did not encounter any problems, although the police went to his house in Rawalpindi six or seven times and asked his family where he was. He left Pakistan with the assistance of an agent and came back to the UK. The police had not been to his family home since September 2014. He feared persecution from the police if he returned to Pakistan as they believed he had links with some organisation.

3. In refusing the appellant's application, the respondent did not accept the appellant's account of having returned to Pakistan in June 2014 and therefore rejected his claim to have encountered problems in 2014. The respondent in any event found the appellant's account of his arrest to be inconsistent and lacking in credibility. It was not accepted that the appellant was at any risk on return and it was not accepted that his removal to Pakistan would breach his human rights.

4. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Pullig. Judge Pullig considered that it was clear from the grounds of appeal that Article 8 was not relied upon and he therefore only addressed the claim to be at risk on return. The judge had regard to three expert reports, a country expert report from Dr Livia Holden, a scarring report from Dr Andrew Mason and a medical report from Dr Rachel Thomas, Consultant Clinical Consultant. In light of the medical evidence and on the lower standard of proof the judge found the appellant's account of being arrested, detained and ill-treated to be a credible one. However he did not accept that the police had any ongoing interest in the appellant and concluded that he would be at no risk on return to Pakistan. Accordingly he dismissed the appeal.

5. The appellant sought permission to appeal to the Upper Tribunal on seven grounds. Firstly, the judge failed to direct himself properly on the principles of risk on return following past persecution; secondly, the judge failed to take into account the country expert report of Dr Holden; thirdly the judge mistakenly believed the reference to the appellant's imputed affiliation to a banned organisation came from the respondent, whereas it was the appellant's own evidence; fourthly the judge made no clear finding on the appellant's account of the police coming looking for him six or seven times; fifthly there was no evidential basis for the judge's finding that the appellant was not as unwell as he claimed when he was released; sixthly the judge's conclusion on risk on return was unreasonable; and seventhly Article 8 ought to have been considered by the judge as it was a matter before him.

6. Permission to appeal was initially refused by the First-tier Tribunal, but was granted by the Upper Tribunal on a renewed application, on 27 August 2018.

7. At an error of law hearing on 23 October 2018 I found no errors of law in the judge's decision on asylum, humanitarian protection and Article 2 and 3 human rights grounds, but found that the judge had erred in law by failing to consider Article 8, as follows:

> "12. As I advised the parties at the hearing I agreed that the judge had erred by failing to consider Article 8 when it seems that it was a matter before him. Mr Avery conceded as much and accordingly a resumed hearing is required for that aspect of the appellant's case to be decided.
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> 13. As for the remaining grounds of appeal, I do not find that the judge erred in law. The judge was plainly mindful of the principles in Demirkaya v Secretary Of State For Home Department [1999] EWCA Civ 1654 in regard to past persecution being a strong indicator of future risk and indeed expressly referred to that at [135]. The judge gave careful consideration to the nature and basis of the past persecution, noting that the appellant knew nothing of the reasons for his detention and had no political involvement. It is asserted in ground three that the judge made a mistake of fact in that the question of imputed association with a banned organisation was raised by the appellant himself and not by the respondent and Ms Butler referred to the appellant's answer in his screening interview in that respect. However what the judge was plainly saying at [127] was that the appellant's evidence was essentially that he did not know what was the basis for the accusations by the police beyond the fact that he was asked whether he was linked to any organisations. As the judge properly found at [126] and [127] there was no evidence to show that the police were referring specifically to a political association and that the question of a Convention reason was therefore speculative. In any event, it is clear that the judge found that the police had exhausted all interest in the appellant after questioning him and searching his home. Taking the judge's findings at [131] and [132] together, it is clear that the judge rejected the appellant's claim that the police were continuing to look for him and that they maintained an interest in him, given that they had released him from detention and had conducted the necessary searches of his home and belongings, with no further visits since September 2014.
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> 14. It was Ms Butler's submission that the country expert's conclusion was that the appellant nevertheless remained at risk and that the judge had failed to consider that conclusion. However the judge plainly took the expert's opinion into consideration when reaching his conclusions on risk on return. His consideration of the expert report was not simply confined to his findings at [133], but was plainly part of his overall consideration of the question of risk from [129] to [135]. Having carefully considered the expert report myself, it seems to me that the expert's view was no more than that the appellant, as a failed asylum seeker returning to Pakistan who had previously been known to the police, may be questioned by them on return to Pakistan, but she does not then go on to explain why that would then lead to him being persecuted on return. There is no view given by the expert as to why the previous interest in the appellant prior to September 2014 would be maintained on his return to Pakistan and would lead to the ill-treatment described. Paragraphs 21 and 26 do not, as Ms Butler submitted, provide such a view. That was precisely the point Judge Pullig was making at [133] and I find no error in such a finding. The judge was fully entitled to conclude that the appellant had failed to show that there was any ongoing interest in him and that there was any risk of his previous experiences being repeated on return to Pakistan. Such a

> conclusion followed a full and careful assessment of all the evidence before him, including the expert reports, and was entirely open to him on the basis of that evidence.
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> 15. For all of those reasons I find no errors of law in the judge's decision on the question of risk on return and I uphold the decision in that respect. The judge's decision to dismiss the appeal on asylum, humanitarian protection and human rights (Article 2 and 3) grounds therefore stands.
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> 16. However the appellant's challenge in relation to Article 8 is upheld and accordingly the case will be listed for a resumed hearing in the Upper Tribunal for a decision to be made on Article 8."

8. The appeal came before me again for a resumed hearing on 18 December 2018, for a decision to be made on the appellant's Article 8 claim.

9. At the hearing, Ms Fitzsimons sought to rely on Article 3 as well as Article 8 in relation to the appellant's mental health and the risk of suicide, in light of a further medical report from Dr Rachel Thomas, the Consultant Clinical Psychologist, dated 8 December 2018. Mr Avery had no objection to Article 3 being raised as a ground of appeal. As the appellant had been identified by Dr Thomas, and recognised by the First-tier Tribunal, as a vulnerable person, I ensured that he was comfortable with the proceedings. He chose to wait outside the hearing room whilst Ms Fitzsimons made her submissions.

10. Ms Fitzsimons submitted that the starting point was Judge Pullig's positive credibility findings and his acceptance of the medical evidence. She referred to Dr Thomas's initial report and conclusions and to the recent report in which Dr Thomas considered that the appellant's mental health had deteriorated and that he was at risk of committing suicide if he had to return to Pakistan. Ms Fitzsimons referred to the relevant test in Y & Z (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362 in relation to the risk of suicide. She submitted that the appellant had a subjective and genuine fear of return to Pakistan and that he would be incapable, as a result of his fear, of accessing facilities in that country. He therefore satisfied the test in Y and Z and his removal would be in breach of Article 3. For the same reasons, there were very significant obstacles to the appellant's integration in Pakistan for the purposes of Article 8. Ms Fitzsimons relied in that regard on Dr Thomas's conclusions on the appellant's inability to live a life without fear, the risk of suicide, his inability to access family and other support and his inability to find work. Ms Fitzsimons submitted that there were exceptional circumstances outside the immigration rules on the basis of the medical evidence and the impact of removal on the appellant and he therefore also succeeded on Article 8 grounds.

11. Mr Avery submitted that, whilst Judge Pullig found the appellant's account to be true, there were question marks over the genuineness of his claim, as he had overstayed and used false documents to leave and return to the UK and had therefore flagrantly ignored immigration control. This was not a matter of a straightforward genuine account. The appellant's lack of honesty had not been included in the expert's assessment. Dr Thomas's assessment of risk and suicidality was only based on what the appellant had told her, but he had a motivation to stay in the UK. It was necessary to look at the appellant's evidence in the context of the whole case and decide if his account could be

relied upon. If it could not, then the expert's opinion carried little weight. In concluding that the appellant could not be supported by his family in Pakistan, Dr Thomas had not explored the fact that he had lived with them previously and why they would not now help him. Mr Avery submitted that there was nothing other than the medical issues in this case and the appellant could not, therefore, succeed on Article 8 grounds.

12. In reply Ms Fitzsimons submitted that the appellant was a genuine victim of torture and would not be able to cope to the extent of accessing any support in Pakistan.

Consideration and Discussion

13. It is submitted on behalf of the appellant that his mental health has deteriorated to such an extent that he is at risk of suicide and now meets the high threshold to establish an Article 3 claim.

14. The relevant test in such cases is set out in J v Secretary of State for the Home Department [2005] EWCA Civ 629, as endorsed in Y and Z.

> "26. First, the test requires an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case. But the ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see *Ullah* paras [38-39].
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> 27. Secondly, a causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant's article 3 rights. Thus in *Soering* at para [91], the court said:
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> > "In so far as any liability under the Convention is or may be incurred, it is liability incurred by the extraditing Contracting State by reason of its having taken action which *has as a direct consequence the exposure of an individual to proscribed ill-treatment.*"(emphasis added).
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> See also para [108] of *Vilvarajah* where the court said that the examination of the article 3 issue "must focus on the foreseeable consequences of the removal of the applicants to Sri Lanka…"
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> 28. Thirdly, in the context of a foreign case, the article 3 threshold is particularly high simply because it is a foreign case. And it is even higher where the alleged inhuman treatment is not the direct or indirect responsibility of the public authorities of the receiving state, but results from some naturally occurring illness, whether physical or mental. This is made clear in para [49] of *D* and para [40] of *Bensaid.*
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> 29. Fourthly, an article 3 claim can in principle succeed in a suicide case (para [37] of *Bensaid*).
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> 30. Fifthly, in deciding whether there is a real risk of a breach of article 3 in a suicide case, a question of importance is whether the applicant's fear of ill-treatment in the receiving state upon which the risk of suicide is said to be based is objectively well-founded. If the fear is not well-founded, that will tend to weigh against there being a real risk that the removal will be in breach of article 3.

> 31. Sixthly, a further question of considerable relevance is whether the removing and/or the receiving state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms, that too will weigh heavily against an applicant's claim that removal will violate his or her article 3 rights."

15. The evidence in support of the appellant's claim to be suicidal is the psychological report from Dr Thomas. Ms Fitzsimons' skeleton argument, at [21] to [29], quotes relevant sections from Dr Thomas's two reports. In her first report Dr Thomas diagnosed the appellant as presenting with significant psychiatric symptoms of Major Depressive Disorder with a secondary diagnosis of Post-Traumatic Stress Disorder (PTSD) but did not consider him to be a suicide risk. By the time of her second report she considered that the appellant's mental health had significantly deteriorated and that he was a suicide risk. The decline in his mental health was mostly due, she concluded, to the delay in the resolution of his immigration status and the dismissal of his appeal and prospect of removal, as stated at [42] of her second report.

16. Judge Pullig accepted the medical and other expert opinions, including Dr Thomas's report, at [118] of his decision, and made his positive credibility findings on that basis, and with regard to the fact that the appellant only had to prove his case to the lower standard of proof. I cannot, and do not, go behind Judge Pullig's findings in that regard and do not reject the conclusion that the appellant has mental health issues. However, having said that, I have to make my own assessment of the weight to be attached to Dr Thomas's conclusions on the risk to the appellant in terms of suicide and self-harm and ability to cope on return to Pakistan in light of those mental health issues. Dr Thomas is an expert in her field and I do not doubt her opinion on the basis of how the appellant presented before her and fully accept that she would be able to recognise symptoms of psychological decline based upon the evidence before her. However I cannot ignore the fact that Dr Thomas did not have an entirely complete and accurate picture of the appellant's circumstances when making her assessment.

17. It is relevant to note, as Mr Avery submitted, that there were areas in which Judge Pullig did not find the appellant's account credible. Whilst he accepted the core of the appellant's account, as he said at [119], he made it clear at [129] that he had reservations about his claim to have been released because the police believed him to be dead, he expressed concerns at [130] and [131] about the account of police visits to his home and at [132] he concluded that he did not believe the appellant's claim that the police continued to have an interest in him. It is also relevant to note, as Mr Avery submitted, that this was not a straightforward case of an applicant who had been found to be honest in all respects. The appellant has admitted using false documents and a false identity to leave the UK and return to the country, having paid an agent in the UK £3000 to leave illegally with an intention to return here and join his wife whom he had left in Northern Ireland. He had made his asylum claim only after being arrested when attempting to fly to Northern Ireland. Furthermore, he had given no indication of any mental health problems when interviewed about his claim and, on the contrary, had said that he had no health concerns, the Rule 35 report referred only to physical scars and not to any mental health problems and his grounds of appeal included no indication of any mental health problems. Although Dr Thomas was in possession of the respondent's refusal decision and other

documents when preparing her report, there is no indication in her report that she had taken account of these matters in making her assessment. Rather, her assessment was based upon an acceptance of the information provided to her by the appellant at the interview.

18. It is also a relevant consideration that the appellant did not provide Dr Thomas with a complete and honest account of his circumstances in other respects. It is notable that her assessment was based at [31] and [109] of her initial report upon him being socially isolated and withdrawn and effectively living alone, whereas that was not the case. Contrary to Dr Thomas's understanding that the appellant's wife was in Pakistan ([19]), he had in fact been living with his wife for over two years in the UK at that time of the psychological assessment (as referred to in his wife's statement of 25 October 2017 at [7]). That is particularly relevant when considering Dr Thomas's view, at [130], that being reunited with his wife would be a significant protective factor. In the most recent report Dr Thomas was under the impression that the appellant had only recently been reunited with his wife, as is apparent at [7], whereas that was clearly not the case. It is also of note that in her first report, at [50] and [51], Dr Thomas referred to the appellant's account of feeling claustrophobic in his house and needing to be outside, whereas in her second report at [18] his account was that he rarely left his house. Dr Thomas did not specifically address that change in circumstances, but no doubt would have been influenced by the appellant's wife's apparent re-appearance. The fact that the appellant lied to Dr Thomas about such a significant aspect of his life in the UK certainly raises concerns about the reliability of the account he gave to her of the extent of the symptoms he was experiencing and his suicidal ideations. It also undermines the conclusions reached by Dr Thomas.

19. It is relevant at this point to consider the observations made by Lord Justice Sedley in Y and Z:

> "12. While no tribunal is bound simply to accept everything that such experts say because they have gone uncontradicted, it is well established that the tribunal must have, and must give, acceptable reasons for rejecting such evidence. …
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> 13. Similarly, where the factual basis of the psychiatric findings is sought to be undermined by suggesting that the appellants have been exaggerating their symptoms, care is required."

and

> 62. None of this reasoning represents a licence for emotional blackmail by asylum-seekers. Officials and immigration judges will be right to continue to scrutinise the authenticity of such claims as these with care. …"

20. The latter part of those observations, in [62], is particularly pertinent in considering Dr Thomas's second report at [34] and [57], where she refers to the appellant's stated intention to kill himself rather than returning to Pakistan.

21. As I mentioned earlier, I have no doubt as to Dr Thomas's expertise in assessing the appellant's psychological state, but it seems to me that there are good reasons for being cautious in accepting her conclusions on the extent of his mental health problems and the reality of a risk of suicide. I find myself in agreement with Mr Avery that only limited

reliance can be placed on Dr Thomas's report for the reasons given above at [17] and [18]. There is no history of suicide attempts or self-harm. The assessment of suicidality is based upon the appellant's own assertions of his experiences and feelings. For the reasons given, there is good reason to question the genuineness of those assertions.

22. In the circumstances, it seems to me that the appellant fails at the first hurdle of the test in J. I do not accept that his threats of suicide or self-harm are genuine and nor do I accept that his mental health is at a level of severity that he would be unable to access relevant medical treatment in Pakistan and that he would be unable to look to his family in Pakistan for support on his return. Judge Pullig did not consider the appellant to be at risk on return to his home area and there is therefore no reason why he could not access support from his family as he had previously done, either in his home area or elsewhere in Pakistan. Dr Thomas was of the view that the decline in the appellant's mental health was mainly due to his uncertain immigration status and therefore once he returns to Pakistan that would no longer be an issue.

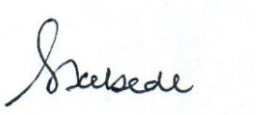
23. For all of these reasons I do not accept that the appellant has shown that his removal to Pakistan would be in breach of Article 3. Neither do I find that he has made out a claim on Article 8 grounds. I do not accept that there would be very significant obstacles to his integration in Pakistan. He has close family members in that country and would have their support on return. He would also have the support of his wife who would return with him. He cannot, therefore, meet the criteria within the immigration rules on Article 8 grounds and there is, furthermore, nothing sufficiently compelling about his private life ties to the UK and his circumstances overall including his health to justify a grant of leave outside the immigration rules.

DECISION

24. The original Tribunal was found to have made an error of law in relation to Article 8 and the decision was set aside. I re-make the decision by dismissing the appellant's appeal on Article 3 and 8 human rights grounds.

Anonymity

The anonymity order previously made is continued, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed  Dated: 19 December 2018

Upper Tribunal Judge Kebede