



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/03511/2019**

THE IMMIGRATION ACTS

**Heard at Field House
On the 4 November 2022**

**Decision & Reasons Promulgated
On the 14 November 2022**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**S M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, instructed by Elaahi & Co Solicitors

For the Respondent: Mr T Melvin, Home Office Presenting Officer

Given the appellant's mental ill health, this decision is to be served on the appellant's representatives who will communicate this decision to the appellant.

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born in 1984. He appeals against the decision of First-tier Tribunal Judge D Brannan ('the judge'), promulgated on 17 September 2020, dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.

2. At a hearing on 29 January 2021, the respondent conceded there was an error of law in the judge's assessment of Article 8. The appeal was adjourned to the 1 July 2021. For the reasons given in my decision promulgated on 8 July 2021, I found there was no material error of law in the judge's findings on deception or sexual orientation. Even on the lower standard, there was insufficient evidence to show the appellant was a member of a particular social group. There was no error of law in the decision to dismiss the appeal on asylum and humanitarian protection grounds.
3. There was no challenge to the judge's Article 3 findings in the absence of an established error of law in relation to the appellant's protection claim. Since it was accepted the judge erred in law in assessing proportionality under Article 8, the decision to dismiss the appeal on human rights grounds was set aside. The appeal was adjourned to reconsider Article 8 and the judge's findings at [115] to [125] were set aside.
4. The appellant relied on the expert medical report of Dr Rachel Thomas ('the medical report'), a consultant clinical psychologist dated 4 October 2022 in addition to the evidence before the First-tier Tribunal. Dr Thomas was of the view the appellant was not fit to give evidence and he was not present at the hearing. There were no further witness statements or evidence submitted on the appellant's behalf.

Submissions

5. Mr Melvin relied on his skeleton argument dated 1 November 2022 and the refusal letter dated 17 December 2018. He submitted that medical facilities were available to the appellant in Pakistan and he could access the required medication. Mr Melvin submitted that little weight should be attached to the medical report because Dr Thomas had failed to take into account the appellant's deception and false asylum claim. It was not open to her to re-assess or comment on credibility. Mr Melvin submitted Dr Thomas failed to take into account the judge's preserved findings and the fact the appellant had suffered from depression since 2014 in forming her opinion that the appellant's mental health condition was caused by his fear of ill-treatment on account of his sexuality.
6. Mr Melvin submitted the high point of the appellant's case was the medical report but there was no evidence of lack of medication or treatment for the appellant's mental health condition or of the appellant's current living conditions and private life. The medical evidence should be assessed in the light of HA (expert evidence; mental health) Sri Lanka [2022] UKUT 111 (IAC). Mr Melvin accepted that treatment in Pakistan may not be as good as in the UK but there was no evidence the appellant would not be able to obtain treatment on return.
7. Mr Spurling confirmed the only issue before me was Article 8 and he accepted the appellant could not satisfy the immigration rules. The appellant had failed to show he was a bisexual man as claimed or that he

would have no family support on return to Pakistan given these findings were preserved. The judge did not find the appellant's asylum claim credible and found he had failed to show his family would not assist him on return. Mr Spurling submitted this finding was not that the appellant had an effective support network but was dependent on his ability to ask for help.

8. Mr Spurling submitted Dr Thomas had the relevant expertise and was entitled to comment on the evidence. There was no doubt the appellant's mental health condition was caused in part by his immigration status, but his condition was more complicated than just anxiety over the uncertainty of his situation. The appellant's medical records were consistent and his mental health was worsening notwithstanding medication. His illness was long standing and chronic and therefore harder to treat. Any interruption in treatment would inevitably result in a further deterioration in the appellant's mental health. The appellant's ability to access treatment was crucial. Whether he was fit to fly or detain were relevant Article 8 considerations.
9. Mr Spurling accepted there was no evidence of how the appellant would be treated because of his mental health condition. The medical report demonstrated the appellant's mental health condition would prevent him from getting treatment. He suffers from hallucinations and was unable to concentrate on what was going on around him. He perceives a tragic loss of family notwithstanding he cannot rely on his sexual orientation as the cause. Mr Spurling referred to Y and Z v SSHD [2009] EWCA Civ 362 and submitted the appellant's subjective experience was that he had lost his family and he hears voices which make him feel that he is cut off from his family. The appellant would not seek their help on return even if it was available. There was also evidence the appellant forgets to take his medication and relies on the friends he lives with. These matters were all relevant to his ability to resettle in Pakistan.
10. Mr Spurling accepted that without the medical report the appellant could not succeed under Article 8. However, the severity of the appellant's mental ill health and psychosis coupled with his genetic vulnerability and pre-disposition suggest the cause is more than uncertainty over his immigration status. It was rare to see someone with the appellant's symptoms and PTSD traits. Dr Thomas was entitled to look at whether sexual orientation was part of the cause and she was aware the appellant's credibility was questioned. Her role was to describe the symptoms, attribute a possible cause and give her opinion on whether that was consistent. It was likely in the appellant's case that his trauma had something to do with his family or how he sees his relationship with his family.
11. The opinion of Dr Thomas was not undermined by her view that sexuality was causative. The appellant had suffered trauma and her report was compliant with the Istanbul protocol. She properly considered fabrication and her findings were reliable. The appellant's deception did not mean he

was not telling the truth about his medical condition which was evidenced in the GP reports over the last eight years and the consistent reports of two experts: Dr Thomas and Dr Atas-Kelly.

12. Mr Spurling submitted the appellant's inability to give evidence and Dr Thomas's concerns about the appellant reading the medical report were relevant to how the appellant would access the support available in Pakistan. The appellant would not be able to re-establish himself in his own area because he was not capable of seeking help from his family. The appellant needed safety and stability to access support and his subjective reality prevented him from doing so. Appropriate treatment was not practically available to the appellant because he was very ill. This was partly due to his genetic predisposition but also a traumatic event, as he perceived it to be, namely the loss of his family in Pakistan exacerbated by the uncertainty of resolving his immigration status and his fear of return to Pakistan.
13. Mr Spurling submitted that return to Pakistan would be a serious interference with the appellant's psychological integrity. Any family support was insufficient to manage his condition because he was not able to access a support network and did not have the mental resources to re-establish himself. The appellant was too ill to be removed. On the particular facts of this case, the interference with the appellant's private life was disproportionate.

Findings

14. The appellant came to the UK as a student in June 2010. His application for further leave to remain was refused on grounds of deception in December 2014 and he has remained without leave since then. On 10 May 2016, the appellant claimed asylum which was refused on 17 December 2018. The appellant's appeal was dismissed on 17 September 2020. I upheld the decision to dismiss the appeal on asylum and humanitarian protection grounds.
15. The following findings were preserved. The appellant used deception in his English language speaking test in August 2012. The appellant was not a credible witness. He did not identify as bisexual and was not a member of a particular social group. The appellant's father did not threaten to kill him and the appellant had failed to show he would not have the support of his family on return.
16. The appellant's mental ill health was caused by his immigration difficulties since 2014 and will not be resolved by removal to Pakistan. The appellant would be at risk of suicide if removed, however he could access treatment and had failed to show he would not have the support of his family. The threshold in AM Zimbabwe v SSHD [2020] UKSC 17 was not met and there was no breach of Article 3.

17. The only further evidence before me is the medical report which complies with the Istanbul protocol. I am satisfied that Dr Thomas has the relevant expertise and I attach weight to her opinion. The appellant is suffering from severe schizoaffective disorder with additional post-traumatic traits. He is at risk of suicide and/or possible psychiatric break down requiring hospitalisation on return to Pakistan. The appellant attempted suicide on 24 June 2022 and his friend with whom he lives took him to hospital.
18. The appellant's mental health condition is chronic and he has been suffering from a history of depressed mood since 2014. He currently suffers from auditory and visual hallucinations. At [68] Dr Thomas stated: "In my view, the fact that [the appellant] reported his hallucinations to present themselves to him as a replacement (albeit highly malignant) 'family' that he must 'join' illustrates the defensive function of his psychotic illness as an attempt to deal with tragic loss (of his family of origin in reality) in a highly convincing manner."
19. It is unfortunate that Dr Thomas did not consider the appellant's return to Pakistan on the basis of the preserved findings that the appellant had not shown he did not have family support or that his father threatened him. The appellant's reported adverse experiences at the hands of his father and friend Usman were not found credible. I attach little weight to Dr Thomas's opinion in relation to the appellant's ability to access treatment on return to Pakistan (see [105]).
20. The appellant is currently receiving the following prescribed medication: Mirtazapine, Propanol, Quetiapine and Sertraline. He sometimes forgets to take his medication. There was insufficient evidence to show that these medications or suitable alternatives are not available in Pakistan.
21. The appellant's fear on return to Pakistan is not objectively justified. There was insufficient evidence to show the appellant would not be able to access appropriate treatment in Pakistan. I find on the totality of the evidence that the appellant has failed to show he would not have access to care and treatment which will keep the risk of suicide under control.

Conclusions on Article 8

22. The appellant has established private life in the UK given his length of residence and removal will have consequences of such gravity so as to interfere with his private life. The appellant's leave has expired and he has no right to remain in the UK. The interference is in accordance with the law and necessary in a democratic society. The remaining issue is proportionality. I adopt the balance sheet approach and apply section 117B of the 2002 Act.
23. The weight to be attached to the public interest in this case is significant. The appellant has remained without leave since 2014. He has used deception in obtaining a fraudulent English language test certificate which he used to obtain leave to remain as a student. He has made a

false asylum claim and has been found not to be a credible witness. The appellant cannot satisfy the immigration rules.

24. The appellant can speak English. There was no evidence that he is financially independent. Little weight should be attached to his private life which was established when his immigration status was either precarious or unlawful.
25. There was little evidence of the nature of the appellant's private life to weigh in the balance save the medical report. The appellant is seriously mentally ill and at risk of suicide. He was unfit to give evidence and is currently unfit to detain and unfit to fly. However, there was insufficient evidence before me to show that, notwithstanding the appellant's subjective belief, he could not access support from his family and/or access treatment in Pakistan to prevent the risk of suicide.
26. Looking at all the evidence in the round, I find that the appellant's removal to Pakistan is proportionate. There would be no breach of Article 8 and I dismiss the appellant's appeal against the refusal of his protection claim on human rights grounds.

Notice of Decision

Appeal dismissed on human rights grounds.

J Frances

Signed

Date: 7 November 2022

Upper Tribunal Judge Frances

TO THE RESPONDENT **FEE AWARD**

I make no fee award because I have dismissed the appeal.

J Frances

Signed

Date: 7 November 2022

Upper Tribunal Judge Frances

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.