



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: UI- 2022-001849
First-tier Tribunal No: HU/52928/2021 &
IA/08470/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 22 February 2023

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

'AS' (Pakistan)
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: The appellant did not attend and was not represented.

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

Heard at Field House on 19 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. This is because this decision and reasons discuss his private medical matters. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant.

DECISION AND REASONS

Introduction

1. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Juss, (the 'FtT'), promulgated on 16th March 2022, by which he dismissed the appellant's appeal against the respondent's decision dated 11th June 2021. That decision was to refuse the appellant's application for leave to remain based on the appellant's right to respect for his family and private life, under Articles 3 and 8 of the European Convention on Human Rights.
2. The appellant's claim was that there would be very significant obstacles to his integration into his country of origin, Pakistan, for the following reasons: (i) he had significant mental health issues, specifically recurrent depressive disorder, anxious avoidant and dependent personality traits with a history of self harm. To support this head of claim he relied on the psychiatric report of Dr Mala Singh dated 9 February 2022; (ii) his right to respect for his private life would be breached as he had lived in the UK since 2004; (iii) At the time of the hearing at first instance, most of the appellant's family had moved to the UK and only a small number of relatives were left in Pakistan, who would be unable to assist in his reintegration; (iv) in respect of the right to respect for his family life, the appellant relied upon his close dependence on an adult sibling as he claimed to be estranged from his parents and other family members following the breakdown of his marriage.

The First Instance decision

3. The FtT recorded at paragraph 2 of the determination that the respondent accepted the appellant's medical diagnosis but did not accept that refusal of leave to remain would result in a breach of either article 3 or 8. The respondent asserted that treatment and support for the appellant were available in Pakistan. The FtT referred to GP correspondence and a psychiatric report at [6], and also evidence of the appellant apparently working in the UK in IT and also for the well known restaurant chain, KFC. He was cross examined on the absence of any reference in the psychiatric reports to the appellant having another brother in Pakistan whose existence had not previously been revealed, as well as another brother in Germany. At [11] the FtT recorded the appellant's submission that he was dependent solely on his sponsoring brother in the United Kingdom and that if he were returned to Pakistan he would need a place to live and someone to supervise the taking of his medication on a 24 /7 caring basis. There was also family life in the UK protected by article 8 [11].
4. In a key part of the FtT's analysis, at [14], the FtT Judge concluded:

"14. I do not accept that the fact the Appellant "has been seen by the Mental Health Team on multiple occasions and has reported feeling suicidal due to his immigration status and several threats to kill himself if not given leave to remain in the UK..." will lead to a realistic risk of such an eventuality materialising. I do not find para 8 of the Skele at all credible that, "He has extreme depression and stress, including paranoid thoughts and auditory hallucinations. It is perceived that the Appellant brought shame on his family as a result of his divorce and his former in-laws have given money to someone to kill him if he returns because of the shame."
5. The FtT concluded at [15] that the appellant had an ability and capacity to live and indeed work alone. At [16] the Judge considered the period of time which the appellant had lived in the UK albeit that for large parts of that time the appellant had been without leave. At [17] the FTT concluded that whilst the appellant had

mental health problems medication was available in Pakistan for this and the Appellant had a well to do brother previously unrevealed to help him with his care as well as sisters. At [18] the FtT did not accept that there were very significant obstacles to the Appellant's integration to Pakistan nor did he accept that refusal of leave to remain would result in unjustifiably harsh consequences. At [22] the FTT cited section 117B (6) (b) of the 2002 Act and that it was for the appellant to demonstrate that removal for a temporary period would be disproportionate citing the authority of Younas (section 117B (6) (b); Chikwamba; Zambrano) [2020] UKUT 129.

The grounds of appeal and grant of permission

6. The appellant lodged grounds of appeal which argued:
 - 6.1. Ground (1) - the FTT had impermissibly considered the authority of Younas, when it was not relevant to the present case. Moreover the FTT had not considered fully the Appellant's case outside the rules or set out the relevant considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act). To expect the appellant to leave the UK and apply for entry clearance in a proper way ignored the principle in GM (Sri Lanka) [2019] EWCA Civ1630. The list of factors to be considered in a balancing exercise for the purposes of proportionality was not closed. The balance sheet assessment weighed in favour of the appellant.
 - 6.2. Ground (2) - the FtT had failed to make a proper assessment of whether the Appellant would face very significant obstacles to integration to Pakistan. What was required was a broad evaluative judgement (see **Kamara v SSHD [2016] EWCA Civ 813**). The FtT had failed to consider the appellant's absence from Pakistan for 17 years and the consequent diminution of his ties to that country.
 - 6.3. Ground (3) - The FtT had failed to consider the psychological report and to address the risk of suicide. The report specifically referred to the increase in risk in suicide. The FtT's reasoning at [14] made no reference to the report and did not explain why he reached the conclusions that he did or criticise/make adverse findings about the reliability of the psychologists report.
7. First-tier Tribunal Judge Lodato granted permission on 28th April 2022. The grant of permission was not limited in its scope.

The Hearing Before Us

8. The appellant did not attend the hearing. There was no explanation for his non attendance. We had previously adjourned an earlier hearing of 19 October 2022 when the appellant had also failed to attend without explanation. Following the October 2022 hearing we issued directions to his former solicitors, Richard Nelson LLP requiring them to confirm the circumstances of the appellants nonattendance and we also issued directions to the appellant asking him to confirm the reason for his non attendance. There was no substantive response from Richard Nelson LLP, they simply confirmed that they had ceased to act. The Upper Tribunal subsequently received correspondence from the appellant himself by e-mail, enclosing evidence and indicating that another firm, Boghal Associates were now acting for him. However, in response to correspondence from this Tribunal, that firm made clear that they were not acting for the appellant and asked not to be

sent any further communications. The appellant is therefore without legal representation.

9. We are conscious that the psychologist report suggested that he was a vulnerable witness and would be unable to participate in giving evidence. It did not suggest that he would be unable to provide instructions and he has been provided with a notice of hearing. He has failed to attend without explanation on two occasions. Ultimately our focus, as per the authority of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC), must be on whether the appellant has been deprived of a fair hearing unless we were to adjourn again. We conclude that he is not being so deprived. He has demonstrated capability in sending through documentation and there is no indication of any likelihood that he will be able to obtain further legal representation in the future. In the circumstances it was open to him to attend the hearing even if not to give evidence or with the assistance of a sibling whom it is said he is close but he did not do this. We therefore regarded it as in accordance with the overriding objective that we proceed with the hearing without further delay.
10. Mr Melvin, for the Respondent made brief oral submissions and relied on his Rule 24 response dated 18 January 2023. The appellant had previously made an unsuccessful application on the same basis as this one. He had been in extensive email correspondence with the respondent sending approximately 100 emails. The medical report put forward by the appellant was contradicted by the GP report which explained why the report was not fully assessed. The presenting officer had made that point at first instance. The appellant had only revealed the existence of a brother in Pakistan on the day of the hearing in the FTT. Although the appellant claimed to have self harmed with cigarettes there was no evidence of that. The appellant had had to make an application for indefinite leave to remain outside the immigration rules and this case was therefore an article 8 assessment. In considering whether there were any exceptional circumstances the judge had adopted the approach referred to in Agyarko [2017] UKSC 1. At [13] the judge made findings of family support. Two of the medicines that the appellant needed were available in Pakistan according to the latest CPIN. The onward appeal should be dismissed.

Discussion

11. The appellant's argument that he could not return to Pakistan because he had no family living there was undermined in the judge's view by the revelation somewhat late in the day that the appellant in fact had a younger brother, Obaid, described by the judge as wealthy, and who was still living in Pakistan. The judge also referred to the existence of two sisters living in Pakistan. These were close family members and their circumstances needed to be explained by the Appellant in more detail if it was to be said the appellant had no support.
12. The judge did not accept the credibility of the claim being put forward in the medical evidence that the appellant had threatened suicide in the event that his immigration appeal was unsuccessful. Section 4 of Dr Singh's psychiatric report had referred to threats of suicide for a different reason, that the appellant's wife's family would kill the appellant upon return to Pakistan. It might perhaps have been more helpful to the appellant to understand why he had lost the case for the FtT to have given more detail at [13] and [14] on why the FtT rejected the threats of suicide. Nevertheless this was undoubtedly an appeal which turned on the credibility of the appellant's claims but which was undermined by the

contradictory claims in the medical evidence and the late disclosure of family in Pakistan.

13. The existence of Obaid in Pakistan meant there was support available to the appellant for example in obtaining necessary medical care and medicines which presumably would also include any treatment necessary for the symptoms described in the medical evidence and accepted by the judge. The judge rejected the assertion that Obaid too was estranged from the appellant stating that no evidence to support that had been put forward. Given that this was a close relative of the appellant it was reasonable for the judge to have expected evidence to be in existence if indeed it was the case that Obaid and the appellant were estranged. The judge rejected the appellant's claim that he was estranged from members of his family giving as his reason that there was nothing in the appellant's circumstances or marriage that would have led to estrangement from his own family. Again, the burden of establishing estrangement rested on the appellant and the judge was entitled to take the view that the evidence fell far short of establishing the appellant's claim on the balance of probabilities.
14. Although the appellant had lived in the United Kingdom for a number of years, much of this time was without any valid leave to remain, as the FtT noted. There had been no leave since 17 April 2011. At [16] the FtT referred to section 117B of the 2002 Act which provides that little weight should be given to a private life that is established by a person at a time when that person is in the United Kingdom unlawfully. The FtT was thus entitled to dismiss the appellant's length of stay as a significant factor in the appellant's favour in the balancing exercise undertaken in the determination.
15. Overall we find that while the determination was concise in places it did not contain any material error of law. The appellant was unable to establish that his personal circumstances meant there would be significant obstacles to his integration to Pakistan. The appellant spoke the local language and had family members who could assist him.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and the decision of the First-tier Tribunal shall stand. We dismiss the Appellant's onward appeal.

Dated this 26th day of January 2023

Signed

Deputy Upper Tribunal Judge Woodcraft