IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005458
First-tier Tribunal Nos:
HU/58117/2021
IA/18040/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April

Before

UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

HAR
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Phelps, Counsel, instructed by Turpin & Miller LLP
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on 7 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

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 (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan. Her date of birth is 21 November 1960.

2. On 16 November 2022 the First-tier Tribunal (Judge Dempster) granted the Appellant permission to appeal against the decision of the First-tier Tribunal (Judge Shepherd) to dismiss her appeal against the decision of the SSHD on 2 December 2021 to refuse the Appellant's application on human rights grounds.

3. The Appellant came to the UK on 27 May 2014 having been granted a five year family visit visa which was valid from 2 March 2012 until 2 March 2017. She made an application for leave to remain (LTR) on 17 November 2014. This was refused by the SSHD on 9 February 2015. The Appellant appealed against this decision. Her appeal was dismissed by the First-tier Tribunal (Judge Ferguson) following a hearing on 24 July 2015. Applications for permission to appeal were refused by the First-tier Tribunal and the Upper Tribunal. The Appellant became appeal rights exhausted on 28 January 2016. She made an application on 2 March 2016 for LTR which was refused by the SSHD on 29 January 2019 under paragraph 353 of the Immigration Rules (IR). This was refused by the SSHD The Appellant made another application for LTR on 5 June 2019. This was similarly refused by the SSHD on 8 October 2019 pursuant to para 353 of the IR. The Appellant made a further application for leave on 26 October 2020 which gave rise to the decision under appeal.

4. The Appellant's case before the First-tier Tribunal was that the decision of the SSHD breaches her right to family and private life contrary to Article 8 ECHR. She has family life with her adult children in the United Kingdom. She is in poor health and is dependent on them for care. There are very significant obstacles to reintegration into Pakistan under para 276ADE(1)(vi) of the IR.

5. The First-tier Tribunal heard evidence from the Appellant's son, AAR and her two daughters (R and L). The Appellant did not attend the hearing and nor did she rely on a witness statement.

6. The judge made findings of fact at para 53 onwards. She set out paragraphs of the decision of Judge Ferguson who dismissed the Appellant's appeal in 2015. Judge Ferguson found that the Appellant and her family had exaggerated her medical condition.

7. The judge at paras 57 to 59 engaged with the decision of the SSHD relating to suitability (S-LTR.4. of the IR) concerning an NHS debt of £10,290.53 incurred by the Appellant. The judge concluded that the Appellant fell for refusal under this provision and that the SSHD was entitled to exercise discretion against her.

8. The judge engaged with para 276ADE(1)(vi) at para 60 onwards. The judge had before her evidence from Dr Alun Jones, a consultant psychiatrist, dated 21 May 2019 (and an addendum dated 23 March 2020). Dr Jones diagnosed the Appellant as having PTSD, severe depression and mobility issues. He opined that there was no likely significant improvement in the Appellant's health. Although only aged 50 he concluded that if she returns to Pakistan her life expectancy would be shortened. He stated that the Appellant is incapable of household activities although she is not totally physically incapacitated.

9. There was also before the judge a report from a clinical psychologist, Dr Sarah Whittaker Howe dated 7 March 2020. In Dr Howe's opinion the Appellant has PTSD as a result of a sexual assault on her committed by a handyman in 2013 in Pakistan and the death of her husband. Dr Whittaker said that she had no concerns that the symptoms of PTSD and depression were not genuine, however

she stated that there were some aspects of the Appellant's presentation that she could not explain and which could be indicative of malingering although she thought there were better explanations and recommended further investigations. Dr Whittaker found that there would be an elevated risk of suicide should the Appellant return to Pakistan, however in the NHS this would be rated as medium risk. Dr Whittaker did not agree with Dr Jones' assessment of the likelihood of self-harm. In Dr Whittaker's opinion the Appellant would not be able to independently organise and access medical treatment in Pakistan and that this would need to be done for her.

10. The judge had before her three letters from the Appellant's GP, Dr S J Maroof, dating from March 2019. The most recent letter is dated 3 March 2022. The judge noted that it stated that the Appellant had "new diagnoses since being in the UK" and she noted those as being diabetes mellitus, worsening hypertension, degenerative hip disease, iron deficiency anaemia, frozen shoulder, splenomegaly, PTSD and polycythaemia. The judge found that it may be that the Appellant had these conditions previously and they were only diagnosed once in the UK but she commented that she did not have medical records from Pakistan although these appeared to be before Judge Ferguson.

11. The judge noted that Dr Maroof indicated that a recent MRI scan showed shrinking of the Appellant's brain which he stated could impact on cognitive function, however he indicated that the most notable concerns were depression and PTSD relating to the Appellant's husband's death and an incident of sexual assault in Pakistan.

12. Dr Maroof's opinion was that if the Appellant is returned her mental state would deteriorate. He stated that her state had worsened since he first saw her in 2017 and that she had become increasingly reliant on her family. The judge took issue with this because she found that the the evidence indicated that Dr Maroof first had contact with the Appellant in February 2019 and therefore he could not have seen her in 2017. The judge noted that Dr Maroof did not give evidence at the hearing and the evidence was that he had retired and that the Appellant was now seeing a new GP and had been referred to a memory clinic for further investigation.

13. The judge commented that she did not have the GP records relating to a referral to the memory clinic. The judge said there was no explanation why there were no GP records from 2019. She noted that the majority of entries in the GP records were from "Megan Stevens" and yet she had not been asked to provide evidence. She said that instead of evidence from Megan Stevens she had evidence from Dr Maroof "who only saw [the Appellant] on a few occasions after February 2019". The judge concluded at para 68:-

> "I find the short time for which he saw the Appellant casts doubt on the veracity and reliability of Dr Maroof's letters, particularly since his claim to have known the Appellant since 2017 is not borne out by the records themselves. I therefore attach limited weight to his letters".

14. The judge at para 71 stated that she accepted that there are weaknesses in Dr Jones' report and addendum. She noted that Dr Jones admitted that most of his interview was with the Appellant's son and she found that Dr Jones "appears to accept everything the son said without question; he does not detail his specific qualifications but gives a lot of general assertions about his experience; he

carried out the assessment on one occasion by videolink without an independent interpreter".

15. The judge in the same paragraph stated as follows:-

> "It does not appear that Judge Ferguson found his report to be persuasive evidence of the Appellant's state of health and I find the same. I do not find the addendum adds much, if anything to the original report, given Dr Jones did not see the Appellant for a further assessment".

16. In relation to Dr Whittaker Howe's evidence the judge noted at para 75 that it was undertaken with an independent interpreter and without input from family members. The judge stated "Whilst I can see that someone other than the son was the interpreter, I do not know who it was nor how independent they were". However, the judge noted that Dr Whittaker Howe had the refusal letter and the decision of Judge Ferguson who found that the Appellant's symptoms had been exaggerated. The judge concluded as follows:-

> "Overall, I attach considerably more weight to this report than that of Dr Jones but I do not find it sufficient to detract from the First Determination's findings that the Appellant's symptoms are being exaggerated, for the reasons I shall now state".

17. To summarise those reasons, the judge stated that there was little in the GP records mentioning poor mental health prior to 2019. The judge attached weight to Dr Whittaker Howe saying that "she could not explain aspects of the Appellant's behaviour".

18. In relation to the 2013 incident the judge went on to state as follows:-

> "The family say it occurred in May 2013 however it was not mentioned in the First Decision (such that I must treat it with the greatest circumspection) and the family have been unclear about when they came to learn of it. There were two applications after the First Decision prior to the current one and there is no evidence of it having been mentioned in those applications. Even if it did happen, the Appellant was able to continue living in Pakistan without issue for some time afterwards and there is no mention of PTSD prior to 2019. I accept that PTSD can occur several years after a traumatic incident, but given the GP evidence and the First Decision, I do not accept that this is the case for the Appellant. I have no direct evidence from her on the subject".

19. The judge went on at para 80 to state that she accepted that the Appellant had depression, "possibly even severe depression", however she did not accept the diagnosis of PTSD because "it is based on an account of events which I have found not to be credible".

20. The judge accepted that the Appellant had several physical health conditions but that these were not sufficient to persuade her on balance to depart from the findings of the First-tier Tribunal that she does not require long term personal care to perform everyday tasks. The judge concluded at para 80 that the evidence as a whole did not show a significant decline in the Appellant's health. It was not the Appellant's case that medical treatment was not available in Pakistan and the

judge was satisfied that it was. The judge did not accept that the Appellant would not be able to access treatment. She did not find the evidence of the Appellant's three adult children to be credible taking into account the decision of Judge Ferguson. She found that there were not very significant obstacles "in terms of the Appellant's mental or physical health".

21. The judge went on to find that the family had not investigated either care in the home or residential care homes in Pakistan "to any meaningful extent". She did not accept that there was no property in which the Appellant could live in Pakistan, she did not accept that the property is no longer available for the Appellant to live in.

22. The judge did not accept a current risk of suicide nor that the current risk would be significantly elevated if the Appellant was to return to Pakistan. The judge considered Article 3 at paragraphs 86 and 87 concluding that the test set out in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 had not been met. The judge went on to dismiss the appeal under Article 8. The judge did not accept "the truthfulness of the account of her state of health" (see paragraph 94) and she found that it was "difficult to discern the actual nature of the Appellant's relationships with her family and the amount of interaction with the grandchildren is particularly unclear".

The Error of Law

23. We find that the grounds are made out and we communicated this to the parties at the hearing. We set aside the decision of Judge Shepherd. Taking into account the case of Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 we decided to remit the matter to the First-tier Tribunal for a rehearing on all issues. None of the findings of Judge Shepherd are preserved.

24. We did, however, find the grounds insufficiently particularised and unhelpful. It is not necessary for us to set them out. The main thrust of them concerns the judge's findings relating to the medical evidence, particularly that of Dr Whittaker Howe. We take on board Mr Clarke's submissions. We are mindful of what the Court of Appeal said in Lowe v SSHD [2021] EWCA Civ 62. We exercise the appropriate level of caution when interfering with the findings of the First-tier Tribunal, however we conclude that the judge did not adequately reason why she found that the Appellant did not have PTSD as found by a consultant psychiatrist and a psychologist (we note that Dr Whittaker Howe did not simply agree with Dr Jones but conducted her independent assessment of the Appellant). While, the judge was entitled to reject the evidence of PTSD, particularly in the light of the findings of Judge Ferguson that the Appellant and her family had exaggerated her health conditions in 2015, the reasons that the judge gave are inadequate.

25. The judge proceeded on the basis that the evidence of Dr Jones had been before Judge Ferguson. This is factually incorrect. While Mr Clarke did not disagree with this he said that it was not a material error. However, we do not agree. While we accept that Judge Shepherd made findings for herself in respect of the evidence of Dr Jones, she applied Devaseelan [2002] UKAIT 702 noting that her starting point was the decision of Judge Ferguson who found that the family exaggerated the Appellant's medical condition; however, Judge Ferguson did not have before him the evidence of Dr Jones, a consultant psychiatrist. Judge Shepherd proceeded on the basis that Judge Ferguson had rejected the evidence of Dr Jones. It is impossible for us to say that had the judge not erred in this way, she

would have reached the same conclusion because she started her assessment on the wrong footing.

26. We were also concerned with the judge's assessment of the evidence of the Appellant's GP, Dr Maroof. While the inaccuracy in the date identified by the judge was capable of undermining the assessment of the deterioration of the Appellant's mental health over time, it is difficult to see how it could undermine the GP's record of the Appellant having been diagnosed with PTSD as he records in his most recent letter. The judge was concerned about the lack of medical notes post-2019; however, it is difficult to understand why the judge considered the GP's letters carried limited weight. It can be reasonably inferred that the GP's letters were written with reference to the Appellant's medical notes.

27. The Appellant had been diagnosed as having PTSD as a result of two incidents, the death of her husband and the sexual assault in 2013. The judge did not accept that the latter occurred. The judge's reasons for rejecting the evidence of the incident in 2013 are difficult to understand. There was evidence seeking to explain the late disclosure of this incident. The evidence of the Appellant's family was that the Appellant had not told them about the incident until 2018. Moreover, the matter is referred to by Dr Jones in his report. We query what documentary evidence would be available in the light of the Appellant stating that she had not reported the matter to the police.

28. We also note that there is mention of mental health issues, specifically PTSD in the medical notes as cited by Dr Jones in 2015. It is not entirely clear to us whether the judge was cognisant of this.

29. We accept that the judge was entitled to be concerned about the findings of Judge Ferguson and was bound to apply Devaseelan. Moreover, the judge was entitled to query the absence of an up-to-date witness statement by the Appellant. The evidence was not that she lacked capacity. There was no suggestion by the solicitors that the Appellant was not able to give instructions. There was no application for the appointment of a litigation friend. We also took on board Mr Clarke's point that the limited medical notes available did not create a complete picture and this may have been capable of undermining parts of the evidence. However, while the judge in 2015 found that the family exaggerated the evidence, Judge Shepherd found that they were not credible. We are of the view that this is inadequately reasoned.

30. We have not engaged with all the points raised in the grounds. Similarly, we have not engaged with all of Mr Clarke's oral submissions. This is because we do not accept his primary submission that the error in relation to the judge misunderstanding the evidence before Judge Ferguson is not a material error. Whether the Appellant has PTSD will impact on her ability to care for herself and access medical treatment in Pakistan.

31. We set aside the decision of the First-tier Tribunal to dismiss the Appellant's appeal. We remit the appeal to the First-tier Tribunal for a fresh rehearing.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

30 March 2023