IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001364
First-tier Tribunal Nos:
HU/50044/2022
IA/00037/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MR. SIKANDER SARFRAZ
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. M. Benitez, Counsel instructed by J. McCarthy Solicitors
For the Respondent: Mr. T. Melvin, Senior Home Office Presenting Officer

Heard at Field House on 27 June 2023

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Zahed (the "Judge"), promulgated on 5 March 2023, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse leave to remain on human rights grounds. The Appellant is a national of Pakistan who applied for leave to remain based on his private life.

2. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 25 May 2023 as follows:

> "1. It is arguable that the judge (JFTT Zahed) fell into error by drawing an adverse inference from the absence of witness evidence from the appellant's siblings without considering his explanation (that they had a strained relationship).
>
> 2. It is also arguable that the judge drew an adverse inference from discrepancies in dates without considering the medical evidence indicating that the appellant's memory might be impacted by trauma.

> 3. The judge also arguably found an inconsistency where there was none, as it is not clear why the events described in paragraph 28 have been characterised as an inconsistency.
>
> 4. I do not restrict the grounds that can be pursued."

The Hearing

3. The Appellant attended the hearing. I heard submissions from Ms. Benitez and Mr. Melvin. Mr. Melvin handed up a Rule 24 response (dated 7 June 2023 but not on the file). I reserved my decision.

Error of Law

4. Ground 1 asserts that the Judge took an improper approach to the evidence. In particular, the Judge did not take into account the vulnerability of the Appellant as regards the treatment of his evidence. It is asserted that the findings were made without reference to the medical report which confirmed that the Appellant's experiences of trauma were likely to affect his memory; that the Judge was critical of the Appellant's failure to provide evidence from family members despite evidence that they had a strained relationship; and that he referred to an inconsistency where no inconsistency was found.

5. In submissions before me Ms. Benitez stressed that, although the Judge had referred to the Joint Presidential Guidance Note No 2 of 2010, the decision did not contain anything about the effect of the Appellant's vulnerability on the Judge's assessment of the evidence, with reference to [10], [14] and [15] of the guidance.

6. At [11] the Judge states:

> "Having read the medical reports, I find that the appellant suffers from general anxiety disorder, and PTSD for which he has been prescribed medication of sertraline. Applying the Joint Presidential Guidance Note No2 of 2010 I find that the Appellant is to be treated as a vulnerable adult within the meaning of the Joint Presidential Guidance Note No2 of 2010".

That is the only reference to the Appellant's vulnerability as a witness.

7. At [19] the Judge finds that the Appellant has suffered from PTSD and general anxiety disorder. It was submitted that this was wrong and that the Appellant was suffering from PTSD at the time, not that he had suffered from it in the past. The Judge also states: "I take into account that the appellant is not receiving any other treatment such as CBT". I find that at the time of the hearing the Appellant was receiving counselling as is set out in the evidence and referred to in the skeleton argument before the First-tier Tribunal. In a letter from Hestia dated 4 April 2022 it stated that the Appellant was still receiving counselling privately, that he had applied for funding for counselling and he was still receiving services from Hestia due to his PTSD (page 14 of the Appellant's bundle).

8. The medicolegal report is found at G35 of the Respondent's bundle. This states that the Appellant is suffering from PTSD. It sets out his symptoms and then importantly at the end of that page states:

> "Mr Sarfraz's account contains some characteristics consistent with a credible recollection of an event in real memory rather than a confabulated memory. Mr Sarfraz's experiences of trauma are likely to have affected his memory as highly charged emotional events can cause retrieval problems".

9. This is evidence that the Appellant's memory is affected by his PTSD. I find that there was evidence before the Judge that the Appellant was suffering from PTSD which could cause problems with his memory. There is no evidence that this has been taken into account. Apart from stating that the Appellant is to be treated as a vulnerable witness there is nothing in the decision as to how that impacts on the Judge's consideration of the evidence.

10. In relation to how this has impacted on the Judge's findings he states at [23]:

> "The medico-legal psychologist report by Dr Faiza Khalid dated October 2019, mentions that the appellant saw this man in 2018, there is no mention that the Appellant saw him in 2016 or in 2019. The appellant made no mention of seeing the man in 2018 or that he threatened him in oral evidence before me. I find that these inconsistencies damage the appellant's claim that he saw the man that forced him into labour or that he threatened the appellant. I find that this goes to the core of his claim and finds that it damages the appellant's credibility".

The Judge has found that the Appellant's credibility is damaged by an inconsistency in dates but has made no reference to the likely effect that PTSD could have had on his ability to recollect dates.

11. I have taken into account the Rule 24 response. However, I do not agreed that the Judge took a correct approach to the medical evidence given that there is no real consideration of the effect of the Appellant's mental health on his memory and the impact that would have on his evidence.

12. In relation to the Appellant's 's failure to provide evidence from his family, the Appellant had provided evidence of the strained relationship with his brothers as set out at [25] of the decision. The Judge failed to give any consideration to this evidence at [26] when finding that the Appellant had not provided any evidence from these family members.

13. In relation to finding an inconsistency when there was none, the Judge states at [28]:

> "The appellant came to the UK on a visit visa valid for 6 months until 10 April 2010. The appellant claims that he had a disagreement with his sister and had to leave her house after 4 months. The appellant has not submitted any evidence as to why he did not return to Pakistan before his visit visa expired. I find that this inconsistency damages the appellant's credibility".

14. There is no inconsistency here. To find that his credibility is damaged by an inconsistency which is not made out casts doubt on the reliability of the Judge's findings.

15. I find that the Judge materially erred in his approach to the evidence.

16. Ground 2 argues that the Judge was wrong to conclude that the Appellant had not established very significant obstacles to his reintegration. The Judge considers paragraph 276ADE(1)(vi) at [30] where he states:

> "I find that the appellant will not face very significant obstacles to his re-integration to Pakistan. The appellant speaks, reads, and writes Urdu. He has been communicating with his mother using Whats App. He has lived in Pakistan for 17½ years including his schooling up to O'Levels. The appellant will have family support both emotionally and financially to help him re-integrate to Pakistan. The appellant can obtain Sertraline or an equivalent drug in Pakistan and can obtain any other treatment required. I find that the appellant cannot meet the requirements of Paragraph 276ADE and cannot meet the requirements of Private Life under the Immigration Rules".

17. This is the extent of the Judge's consideration of whether the Appellant would face very significant obstacles. The Appellant's evidence was that he had fallen out with his brothers and so would not be able to rely on them emotionally or financially. In addition to being prescribed sertraline the Appellant was having private counselling and had applied for funding for further counselling. The Judge has given no consideration to this. The Judge has further given no consideration to the effect of the Appellant's mental health on his ability to integrate aside from finding simply that he can obtain sertraline or an equivalent drug and any other treatment required.

18. I was referred to the medicolegal report which set out how extensive therapeutic intervention would be required by the Appellant (page 305 of the Stitched Bundle). The Judge has not given weight to this evidence. He has downplayed the effect of the Appellant's mental health. Given that I have found that the Judge did not properly consider the evidence, I find that his flawed findings carry on through into his consideration of paragraph 276ADE(1)(vi).

19. These findings further carry over into the Judge's wider consideration of Article 8. This is set out at [42]. All of the negative points going against the Appellant are set out, but there is no reference to any impact of his mental health issues. At [44] the Judge states:

> "I find the appellant has suffered from mental health issues before which subsequently reduced with the taking of medication. I find that the appellant's present mental health issue is because of his fear of uncertain immigration status but find that on return to Pakistan, in seeing his family who he has not seen in 13 years and in continuing his medication which I find is available in Pakistan will stabilise his mental health".

20. The Judge finds the Appellant's present mental health issue is due to his immigration status, but the evidence was that his PTSD was caused as a result of forced labour. The Judge finds that, when he sees his family that will help him to stabilise his mental health, but fails to take into account his evidence that he has fallen out with his brothers.

21. I find that the Judge has taken an erroneous approach to the evidence which has fed through into his consideration of paragraph 276ADE(1)(vi) and Article 8 more widely. I find that these errors are material as they go to the core of the Appellant's case and his private life in the United Kingdom.

22. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
>
> *(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."*

23. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b). Given that I have found that the findings of the Judge cannot stand owing to his erroneous approach to the evidence, and given that therefore there are no findings which can be preserved, I consider that the extent of fact-finding necessary means it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

24. The decision of the First-tier Tribunal involves the making of material errors of law.

25. I set the decision aside. No findings are preserved.

26. The appeal is remitted to the First-tier Tribunal to be reheard de novo.

27. The appeal is not to be listed before Judge Zahed.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
13 July 2023