Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2023-001410
First-tier Tribunal No: HU/53696/2021

THE IMMIGRATION ACTS

Decision & Reasons Promulgated:
On 22 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

SHAHZAD HUSSAIN
[NO ANONYMITY ORDER MADE]

Respondent

Representation:
For the appellant: Mr C Avery, Senior Home Office Presenting Officer
For the respondent: Mr Z Raza, Counsel, instructed by Charles Simmons Immigration Solicitors

Heard at Field House on 22 June 2023

DECISION AND REASONS

1. Although the appellant in this appeal is the Secretary of State and the respondent is Mr Hussain, I refer to the parties as they were before the First-tier Tribunal.

2. The Secretary of State appeals the decision of the First-tier Tribunal, following a hearing on 11 January 2023, allowing the appellant's appeal, against the respondent's decision, dated 9 July to refuse the appellant's application for leave to remain on Human Rights grounds. The appellant is a citizen of Pakistan, born on 1 January 1977.

Anonymity

3. No anonymity direction was made by the First-tier Tribunal. There was no application before me for such a direction. Having considered the facts of the appeal including the circumstances of the appellant, I see no reason to making an anonymity direction.

Background

4. The appellant entered the UK on 21 August 2011 on a family visit visa. He overstayed and made an application for leave to remain in the UK on 20 July 2020. The Respondent considered Paragraph276ADE and Article 8 of the ECHR.

5. In relation to Paragraph 276 ADE (1) (vi) of the Immigration Rules, the Respondent did not accept that there will be very significant obstacles to his integration into Pakistan, if he was required to leave the UK. The Respondent refused the application on the grounds of suitability under section S-LTR.1.6 because the appellant's presence in the UK is not conducive to the public good because he had been in the UK since 28 July 2013 without any valid leave.

6. The appellant stated that he suffers with health conditions, and enlargement of his thyroid gland. The appellant had surgery in July 2020 at Royal London Hospital for a benign hurtle cell carcinoma, a very rare cancer of the thyroid gland. The appellant stated that he was suffering from depression, gout and reflux symptoms. The Respondent concluded that suitable medical treatment was available in his home Country with the appellant not providing any evidence that he would be denied medical treatment, nor that he would be unable to travel to obtain such treatment. Therefore, he could access further treatment or medication should it be required in the future in Pakistan. The application was considered under Article 8 and 3 of the ECHR and refused.

First-tier Tribunal decision

7. The appellant's appeal was heard by First-tier Tribunal Judge Bibi on 11 January 2023. The judge that the appellant did not succeed under paragraph 276ADE(1)(vi) as the judge did not accept that the appellant very significant obstacles to his integration in Pakistan. The judge considered the appellant's case outside of the Immigration Rules and considered that it would be a disproportionate interference with the appellant's Article 8 family life if he were expected to leave the UK.

Permission to appeal

8. Permission to appeal was granted by the First-tier Tribunal with all grounds arguable. The Secretary of State appealed on the following grounds. Firstly, that the judge erred in undertaking the proportionality balance, in particular in overlooking the maintenance of effective immigration control and in not considering that the appellant was receiving NHS treatment for his conditions; secondly it was argued that the appeal had been allowed on the basis of the disparity in health care available to the appellant in Pakistan.

Discussion

9. The matter came before me. The appellant submitted a belated cross appeal against the decision of the judge to refuse the appellant's appeal under 276ADE in the event that the Secretary of State's Grounds were made out.

10. I have reminded myself of the authorities which set out the distinction between errors of fact and errors of law and which emphasise the importance of an appellate tribunal exercising judicial restraint when reviewing findings of fact reached by first instance judges. This was summarised by Lewison LJ in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] as follows:

> "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it. iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow

textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

11. It was the primary argument, advanced by Mr Avery, that having found that the appellant did not meet the requirements of the Immigration Rules, including at paragraph [45] that there would be 'minor hurdles on return' in terms of section 117B, of the Nationality, Immigration and Asylum Act 2002the judge failed to adequately engage with the public interest.

12. The judge heard from the appellant and one of his two siblings based in the UK and made a finding, which has not been challenged, that taking into account what was said in **Kugathas [2003] EWCA Civ 31** the appellant enjoyed family life with his sisters and his nephew; the judge found including at [55] that given his health conditions, the appellant is reliant on the support of his sisters and nephew for all of his 'emotional and physical support/needs' and enjoyed their 'real, effective and committed support'

13. The judge had reminded herself, at [51] that the appellant could not satisfy the requirements of the Immigration Rules. **In Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60**, Lord Reed emphasised that failure to meet the requirements of the Immigration Rules is a relevant and important consideration in an Article 8 assessment because the Immigration Rules reflect the assessment of the general public interest made by the responsible minister and endorsed by Parliament.

14. The judge then went on at paragraphs [57] – [59] to consider the public interest test and directed herself in relation to the relevant jurisprudence, including **Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58,** where Lord Wilson observed that the provisions of section 117B cannot put decision-makers in a strait-jacket which constrains them to determine claims under Article 8 inconsistently with the article itself. The judge had regard to the considerations in section 117B, as section 117A(2)(a) required her to do.

15. The judge reminded herself that the appellant's status in the UK was precarious. The judge went on the consider that the appellant could speak English and that he 'has not been a burden on the state at any time as far I can see from the information and evidence placed before me'. The judge went on to find that 'there is any real public interest to be served in removing this Appellant from the UK in the entirety of the circumstances as presented to me, and that it would therefore be a disproportionate interference to expect the Appellant to leave the UK.'

16. Those circumstances included the judge's findings at [51] that:

"given the Appellant's health issues and the ongoing monitoring that is required for his medical condition, rare cancer hurtle cell carcinoma which

can return at any time and would require urgent medical treatment if it returns. Further, he requires monitoring of his mental health condition. He requires check-ups every three months in relation to the hurtle cell carcinoma. His mother in Pakistan is elderly and not in a position to provide him support. His two sisters and nephew are based in the UK and are unable to relocate to Pakistan due to their families and commitments including employment in the UK. He would struggle to obtain the medication for his depression and his sisters would not be able to provide him with the support and supervision he has in the UK. He states that he resides in Mirpur, Azad Kashmir and he would have to make a five-to-six-hour journey to the nearest place in Pakistan to purchase the antidepressant medication. I find that his combined health issues would be impacted if the Appellant were returned to Pakistan. He is currently receiving talking therapy via Waltham Forest to support his emotional well-being alongside his antidepressants".

17. The judge noted, at paragraph [53], that she 'heard cogent evidence' from the appellant and his sister Mrs Kausar on how the family in the UK provides support to the appellant and in her findings the witnesses spoke 'very compellingly'. The judge found at [52] that the appellant had a family network 'who are able to provide him with the emotional and physical support he requires on a daily basis' with treatment and supervision 'which he can be accessed (sic) directly'. Those findings are unchallenged.

18. Whilst the judge might well have better expressed her consideration of section 117B, a proper reading of the decision as a whole discloses that she was aware of and had regard to all the required factors including that maintenance of immigration control is in the public interest. The judge had restated in her findings under Article 8, that the appellant could not meet the Immigration Rules.

19. In finding, as the judge did at [55] that in 'the entirety of the circumstances' it would be a disproportionate interference with the appellant's family life for him to have to leave the UK, as she did not find 'there is any real purpose to be served in removing this Appellant from the UK', the judge having properly directed herself in relation to the relevant section 117B jurisprudence, was stating in terms that the legitimate public interest in this case was outweighed by what were in the judge's findings the compelling facts of this case.

20. The judge's finding that the appellant 'has not been a burden on the state at any time as far as I can see from the information and evidence placed before me' was silent in relation to what would appear to have been the appellant's reliance on the NHS. However, any error in not expressly adding weight to the public interest due to the appellant's apparent reliance on the NHS (which whilst it may not be considered by the respondent as 'public funds' would arguably have been a burden on the

state) would not be material given this judge's findings on the appellant's family life with his adult siblings and their families in the UK and in particular the significance of the family support network in place to assist the appellant in the UK including in ongoing monitoring and supervision of his mental and physical health.

21. Whilst the judge's findings of fact may not be findings that every Tribunal would have reached, they were open to the judge on the facts as she found them. Those findings are adequately set out and the reader can understand why the judge found the decision to be a disproportionate interference with the appellant's Article 8 rights. Ground 1 is not made out.

22. In relation to the second ground of appeal advanced by the Secretary of State (although Mr Avery had nothing to add to the grounds) this ground is misconceived as it is evident that the judge's findings were not based on disparity of health care between Pakistan and the UK, but rather on the level of support that the appellant receives from his family in the UK which the judge found would not be available in Pakistan. There was no **GS (India) [2015] EWCA Civ 40** error as the judge's findings were not based on the absence or inadequacy of treatment in Pakistan, but rather on 'very compelling' evidence (paragraph [56]) of the family dynamics and the dependency of the appellant on the support provided from his family in the UK, given his health conditions.

23. As the Secretary of State's grounds of appeal are not made out, I need not consider the cross-appeal by the appellant (that the judge erred in dismissing the appeal under Article 8).

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to allow the appeal shall stand

Signed M M Hutchinson Date: 11 July 2023

Deputy Upper Tribunal Judge Hutchinson