IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-001544
UI-2023-001545
FtT Nos: HU/52005/2021-
IA/06547/2021
HU/52006/2021
IA/06554/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 July 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

Mr. AZHAR ALI
Mrs. SABA AMJAD
(NO ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms P Solanki, Counsel, instructed by Sky Solicitors
For the Respondent: Mr D Clarke, Senior Presenting Officer

Heard at Field House on 30 June 2023

DECISION AND REASONS

Introduction

1. This is an appeal by the appellants against the decision of Judge of the First-tier Tribunal Farrelly ('the Judge'), sent to the parties on 31 March 2023, dismissing their respective human rights (articles 3 and 8 ECHR) appeals.

Brief Facts

2. The appellants, a married couple, are nationals of Pakistan. The first appellant entered the United Kingdom with valid leave to enter in April 2011. The second appellant joined her husband as a dependant in 2013. Their leave was varied on occasion and expired upon their becoming appeal rights exhausted in August 2018, following an earlier Tier 4 application being refused by the respondent in 2016.

3. The appellants sought leave to remain on human rights grounds. Dependent upon this application was their child, born in 2017. The respondent refused the application by a decision dated 5 May 2021. Article 8 in respect of both appellants and, additionally, article 3 in respect of the second appellant were addressed in the decision.

4. The appeal came before the Judge sitting at Taylor House as a remote CVP hearing in January 2023. The Judge dismissed the appeals by a short decision running to eight pages.

Grounds of Appeal

5. The appellants' grounds of appeal identify three grounds of challenge:

   (i) The First-tier Tribunal materially erred in its assessment of paragraph 276ADE(1)(vi) of the Immigration Rules.
   (ii) The First-tier Tribunal materially erred in its assessment of article 8 outside of the Rules.
   (iii) The First-tier Tribunal materially erred in considering the second appellant's appeal under Article 3.

6. Judge of the First-tier Tribunal Athwal granted permission to appeal by a decision dated 10 May 2023, focusing primarily upon the third ground.

Discussion

7. I heard detailed and helpful submissions from both representatives over the course of approximately two hours. At the conclusion of the hearing, I indicated that I would allow the appellants' appeals on all three grounds and set aside the Judge's decision. I give my reasons below.

8. I turn first to ground 3. The Judge noted the report and supplementary report of Professor Abou-Saleh PhD, MPhil, FRCPsych, and observed his opinion that the second appellant was suffering from mixed anxiety and a depressive disorder. It was further noted that the Professor saw some improvement in the presented condition but considered a need for psychological treatment and medication. I am satisfied that the summary at [22]-[23] does not fully address the concerns identified by Professor Abou-Saleh, particularly:

   - The second appellant has attempted suicide, and describes fleeting suicidal ideas, at paras. 97 and 98 of the original report.

- That the second appellant's current mental condition with increasing risk of suicide and her propensity towards impulsive self-harm, there is a 'significant risk that her behaviour will become unpredictable, disorganised and potentially aggressive in the context of the attempted removal', at para. 47 of the addendum report.

9. The second appellant advanced reliance upon article 3 both in her appeal skeleton argument ('ASA') and in counsel's submissions before the Judge. It was therefore an issue to be addressed: *Lata (FtT: principal controversial issues)* [2023] UKUT 00163 (IAC).

10. The Judge did not expressly identify the relevant test established by the Supreme Court in *AM (Zimbabwe) v. Secretary of State for the Home Department* [2020] UKSC 17, and related observations as to the application of the test in *MY (suicide risk after Paposhvili)* [2021] UKUT 00232 (IAC) and *AM (Art 3; health cases) Zimbabwe* [2022] UKUT 00131 (IAC). Whilst there is no requirement to cite authority for the mere sake of identifying that it has been considered, there is a requirement that relevant tests be clearly applied.

11. The core of the Judge's consideration as to article 3 in relation to the second appellant is identified at [36] of her decision:

> '36. I do not find the second appellant's medical condition reaches the high threshold for a claim to succeed on this basis. Much of her history relates to disagreements with the first appellant's family. However, there is no reason why she should be subjected to their influences. She enjoys a good relationship with her husband and own family. She and her husband are well educated. The second appellant is clear in thought content. There are no active suicidal issues. I can see no reason why they could not be self-sufficient in Pakistan and is they so choose, relocate to one of the cities.'

12. Despite Mr Clarke's adroit defence of the Judge's consideration of the article 3 appeal before her, I am satisfied that there was a failure to engage with relevant expert medical opinion. The conclusion that 'there are no active suicidal issues' lacks lawful reasoning in circumstances where medical opinion details not only that the second appellant has fleeting suicidal ideation, which has previously led to suicide attempts, in relation to subjective fears of family members, but also that there may be a heightened risk of suicide if she were to be removed to Pakistan, the latter concern being active at the date of hearing and decision. Whilst the Judge could lawfully reach a different conclusion to Professor Abou-Saleh and was permitted to note potentially different opinion expressed by other medical practitioners referenced in the Professor's reports, she was required to give adequate reasons for her conclusion. I am satisfied upon careful consideration of the decision that the failure to appropriately summarise Professor Abou-Saleh's opinion at [22]-[23] has infected the article 3 assessment by the Judge not engaging with expert evidence addressing suicide ideation.

13. I note Mr Clarke's robust contention that the evidence taken at its highest cannot meet the article 3 threshold. Ultimately, noting the evidence filed in this matter in relation to suicide ideation, I am satisfied that it cannot be said that no Judge properly directing themselves upon undertaking the fact-finding exercise could allow this appeal. Whilst the second appellant may have a difficult task in satisfying the requisite test, relevant expert evidence must be considered with care and proper attention.

14. I observe that Professor Abou-Saleh's opinion should be considered in light of the guidance provided in *HA (expert evidence; mental health) Sri Lanka* [2022] UKUT 00111 (IAC).

15. Having found that the second appellant succeeds on ground 3, I turn to ground 1 which is concerned with paragraph 276ADE(1)(vi) of the Rules. I indicated at the hearing that several of the challenges advanced by Ms Solanki, though eloquently presented, amounted to no more than a re-argument of the appellant's case before the First-tier Tribunal. However, I am satisfied that, as established above, there was no proper consideration of the second appellant's mental health under article 3 and such material error flows into the assessment of submissions advanced before, and not expressly considered by, the Judge in respect of her integration upon return to Pakistan. I conclude that the appellants have established by means of ground 1 that the Judge materially erred in law.

16. Finally turning to ground 2, much of the hearing was spent examining one sentence in the Judge's decision, located at [30]:

> '30. **There are schools in Pakistan where the appellant's daughter could enrol.** The medical profession includes paediatricians and speech and language specialists but she states that they lack training in child psychiatry and developmental disorders. … The doctor was of the opinion that relocation could not ensure the best interests of their [child].' [Emphasis added]

17. It was accepted by the Judge that the appellants' child has a disability. The appellants' relied upon expert opinion from Dr Livia Holden, Professor at the University of Padua, who opined at paras 99 to 109 of her report that there is a lack of provision for differently abled children in Pakistan and that the costs of schooling are out of reach for most families. I observe that the Judge accepted at [28] of her decision that Dr Holden is an expert witness in respect of issues arising in this matter: *Kennedy v Cordia (Services) Ltd* [2016] UKSC 6; [2016] 1 WLR 597, at [38] - [61]. Having made such a finding as to expertise I am satisfied that there was a requirement for the Judge to adequately consider whether the appellants could afford for their child to enrol at school, and if not would this result in a breach of their protected human rights. This is a fact-sensitive exercise, but one that was properly to be undertaken as it was an issue relied upon by the appellants both in their ASA and in oral submissions. If, as appears to be the case, the Judge did not accept Dr Holden's evidence as to the inability of the appellants' child to enrol in a school, she was required to give adequate reasons for her conclusion. The failure to give adequate

reasons is a material error of law. In the circumstances the appellants succeed on ground 2.

Resumed Hearing

18. I note the presumption that a resumed hearing will normally proceed in the Upper Tribunal. I observe below there are two finding of fact which are properly to be preserved, and usually I would direct that in circumstances where findings of fact have been preserved the matter can be properly heard in the Upper Tribunal. However, this is a matter where there is considerable evidence likely to result in a lengthy hearing. Both appellants may give evidence and I understand that they may consider requesting a remote hearing, which is suitable for the CVP system utilised by the First-tier Tribunal. There is expert evidence to be considered. In these circumstances, I am satisfied that the most appropriate venue for the resumed hearing is the First-tier Tribunal.

19. I agree with Mr Clarke that there has been no challenge to the Judge's finding at [17] of the decision in respect of the appellants being able to reside away from the family of the first appellant:

> '17. … It would be open to them to head to one of the larger cities, such as Islamabad, and start their lives there.'

20. I preserve this finding of fact.

21. I also preserve the express finding that Dr Holden is an expert in respect of matters arising in this matter, at [28].

22. All other findings of fact are set aside.

Decision and Reasons

23. The decision of the First-tier Tribunal sent to the parties on 31 March 2023 is subject to material error of law and is set aside.

24. Save for the finding of fact at [17] that "It would be open to them to head to one of the larger cities, such as Islamabad, and start their lives there" and the finding at [28] that Dr Holden is an expert, all other findings of fact are set aside.

25. The resumed hearing will take place in the First-tier Tribunal sitting at Taylor House to be heard by any Judge other than Judge of the First-tier Tribunal Farrelly.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber