



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004039

First-tier Tribunal No:
HU/05290/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14th of May 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

TAHIR HASSAN
(no anonymity order)

Appellant

and

Secretary of State for the Home Department

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by Maguire, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

Heard at Edinburgh on 8 May 2024

DECISION AND REASONS

1. The appellant appeals against the decision of FtT Judge Rea, issued on 14 October 2021. His grounds are set out as:
 - 1, treatment of medical evidence, (i) – (ii);
 - 2, contradictory findings and failure to resolve material matters, (i) – (iv); and
 - 3, article 8 ECHR, (i) – (v).
2. FtT Judge Singer granted permission on 31 December 2021: ...

In relation to Ground 1, it is arguable that the Judge failed to give adequate reasons regarding his findings on the evidence of Dr Saldhana. It is arguable that there was sufficient evidence to understand the significance of the Appellant's conditions, looking at everything in the round.

In relation to Ground 2, it is arguable that the findings at paragraph 18 were inconsistent with the findings at paragraphs 24 and 30.

In relation to Ground 3, it is arguable that the Appellant's cognitive problems and inability to communicate in Urdu were not taken into account in the assessment of paragraph 276ADE(1)(vi) of the Immigration Rules and in the balancing exercise under Article 8 ECHR.

3. On 17 February 2022, the SSHD responded to the grounds: ...

With respect to the medical evidence, it is clear that despite the findings of the previous tribunal the evidence of Dr Saldhana was still difficult to interpret in relation to the practical impact of his medical issues on the day to day life of the appellant. The observations of the judge were clearly open to them and while they reduced the weight of that evidence accordingly it was still considered as part of the overall proportionality assessment.

The judge assessed the evidence in the round with respect to appellant's situation, but they were not satisfied that the sponsor had meaningfully engaged with the possibility of the appellant being cared for in Pakistan and that it had not been demonstrated that this would not be possible.

The respondent invites the Tribunal to uphold the decision of the First Tier.

4. I deal with the grounds and submissions point-by-point.
5. Grounds 1 (i) and (ii) complain that the tribunal went wrong at [16] in finding the report of Dr Saldhana as difficult or impossible to understand, when it explains the medical terms used, and that an informed reader is left in doubt as to why little is made of the evidence.
6. It was well within reason to find the description of the appellant's overall physical condition as "not great" to be vague and unhelpful.
7. There was force in the submission for the respondent that whatever comments were made about the report, the decision was based on the appellant being in poor health, bedridden and in need of considerable care. The case was not advanced as one which could succeed on health grounds alone. A fine adjustment of the weight given to the medical report would be neither here nor there.
8. Ground 1 probes for selective disagreement on a matter of little decisive import.
9. Ground 2 (i) alleges contradiction between finding shortcomings in the medical evidence at [16] and [18] yet accepting evidence at [24] and [30] from the appellant's son and daughter-in-law of his poor state of health, cognitive decline, and care needs.

10. This is answered in the same way as ground 1. Even if the tribunal's comments on the medical report might be critically dissected, the outcome is not based on there being no evidence of his poor health. Rather, the outcome is based on taking the family's description of his condition as accurate.
11. Ground 2 (ii) continues the same point and says that this impacts on taking the country report at [22] of the decision as based on the appellant's history as given to the expert.
12. This is selective, and somewhat misleading. The report was intended to show difficulty of access to care in Pakistan. The respondent's pertinent observation that the report was by a lawyer, not an expert in health care, was hardly countered by the submission for the appellant that part of the author's qualification was in anthropology.
13. There is no error by the tribunal in giving greater weight to the background evidence proved by the respondent. That was the obvious approach to take, nothing of substance being advanced for the appellant to the contrary.
14. Ground 2 (iii) complains of little weight being given to the report of Dr Morrison, other than confirming depression, when the report also says that although further testing for dementia was required, the appellant's general cognitive functioning is considerably impaired.
15. This sub-ground shows some tension between [14] of the decision, where the tribunal accepts cognitive impairment, and [21], where the report is given little weight other than for the diagnosis of depression. However, the passage at [14] is in course of finding it understandable for the appellant not to give oral evidence, and of giving little weight to his statement. The comment at [21] is accurate in recording the need for further assessment.
16. The matter is again covered by the decision being finally based on the assumption that the appellant is in poor health, as described by his witnesses.
17. Ground 2 (iv) says that the tribunal at [25] said that the appellant did not provide his financial details, but at [35] accepted that he is not financially independent, and so it is "unclear what the relevance is of the FtT looking for" such details.
18. The appellant did not explain his finances, and the tribunal so recorded. This sub-ground is an empty quibble. See also below, on ground 3 (ii).
19. Ground 3 (i) complains that the appellant's inability to communicate is stated at [35 ii] but not taken into account at [35 iii], which leaves a doubt.

20. I have difficulty in following this point, which was not pressed by Mr Forrest (who was not the author of the grounds). [35 ii] is an accurate narration. Nothing further was called for.
21. Ground 3 (ii) is that it was irrelevant and speculative to consider whether the appellant's relatives would always be able to support him.
22. The tribunal was bound by section 117B of the 2002 Act to consider whether the appellant would be financially independent or a burden on taxpayers. It would have been a significant oversight not to consider the state of the evidence on that issue. There is no challenge to the comment that he depended on the NHS and was likely to continue to do so.
23. No error is disclosed.
24. Ground 3 (iii) is that error would be material, because the tribunal was to give little weight, rather than no weight, to the appellant's private life in the UK; but it is hard to conceive that the case, falling short on purely medical grounds, could rationally have succeeded on private life grounds alone.
25. Ground 3 (iv) is an argument on materiality, and a restatement of the case on proportionality. As I have found no material error, this sub-ground calls for no further answer.
26. The appellant's challenge, as a whole, glosses over the absence of enquiry and of adequate evidence (other than from the respondent) about care and support which might be available to the appellant in Pakistan. That played a significant part in the overall assessment at [35 - 37], which was based on the appellant's condition being as portrayed, and which has not been shown to be undermined by any error on a point of law.
27. The appeal to the UT is dismissed. The decision of the FtT stands.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
8 May 2024