IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001818

First-tier Tribunal Nos: HU/56780/2022
IA/09687/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE BEN KEITH

Between

MUHAMMAD BILAL AKRAM
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Skinner, Counsel
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 30 January 2024

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Wyman ("the Judge") dated 11 April 2023. The Judge sets out the brief summary of the facts at paragraphs 1 and 2 of the judgment. This Appellant is a citizen of Pakistan. His stated date of birth is 17 September 1998. This appellant appeals against the decision of the Secretary of State who on 17 September 2022 refused his application for leave to remain on the basis of his family life with his spouse, Ms Tehseen Ahmed, a British citizen. The present appeal is against that decision.

2. The Appellant appeals on three grounds. Ground 1 is that the First-tier Tribunal Judge conflated the assessment of whether there were insurmountable obstacles for the purposes of paragraph EX.1.(b) of Appendix FM of the Immigration Rules, the wider proportionality assessment. Ground 2 is that the First-tier Tribunal Judge failed to address the sponsor's health difficulties as part of the assessment

under paragraph EX.1.(b) of whether there were insurmountable obstacles to continuation of family life outside the United Kingdom. Ground 3 that the First-tier Tribunal Judge failed to give adequate consideration to the medical evidence adduced by the appellant in respect of the sponsor's health difficulties. In my judgment there is an error of law and I will allow the appeal on all three grounds. The reasons I give are as follows.

3. In relation to grounds 1 and 2 which I will deal with together, the Judge in my judgment confuses the tests in relation to the Immigration Rules and the Article 8 assessment. Put shortly there is no proper assessment of Article 8 but there seems to be two assessments of whether or not the appellant meets EX.1.(b). The First-tier Tribunal Judge in heading Findings and Conclusions from paragraph 37 to 53 sets out her decision. The problem with the decision is that the judge concludes at paragraph 40, she says:

> "40. Counsel also acknowledged that the appellant could not meet the Immigration Rules as he cannot meet the financial requirements. The sponsor is working but only on a part time basis and relies on Universal Credit to top up her income. I therefore also formally dismiss this element of the appellant's claim".

4. The judge then goes on to consider in my judgment erroneously Appendix FM EX.1.(b) having already dismissed the appellant's claim on the Immigration Rules, and at 41 says:

> "41. I now turn to consider whether or not the appellant can meet Appendix FM EX.1.(b)".

5. The judge then goes on to look at EX.1.(b) in the following paragraphs and then switches at paragraph 49 to consider Article 8. At 51 the judge says:

> "51. I have considered s117B of the 2002 Act that I have set out in full above. ... Furthermore, it is stated at s117B(4) that little weight should be applied to a private life established when he was without lawful leave".

At 52 the judge says:

> "52. I have also considered the caselaw of Razgar and Agyarko (as set out at paragraphs 31-35 above) and note the high threshold. ..."

The judge then goes on at paragraph 53 to conclude:

> "53. I therefore find that the appellant cannot meet Appendix FM EX.1.(b)".

6. It may well be that the judge has made a serious typographical error in relation to whether she is referring to EX.1.(b) or the Article 8 assessment but it is an error that is so fundamental to the judgment that I cannot correct it. It is therefore not clear that the judge has made proper findings in relation to either EX.1.(b) or in relation to Article 8. As a result I find that there is an error of law in relation to grounds 1 and 2. I should add in relation to ground 2 that Mr Skinner has submitted that there is no reference to the appellant's wife's medical evidence or no sufficient weight to the medical evidence and I agree.

7. In relation to ground 3 which is the failure of the judge to deal with medical evidence, there is an error of law. The judge states at paragraph 50:

> "50. It is noted that Ms Ahmed has various medical problems such as diabetes and anxiety, as confirmed by a letter from Thornhill Clinic. There is suitable treatment for these conditions in Pakistan and no Article 3 health grounds were raised by Counsel".

8. That is the sum total of the consideration of the medical evidence. There was before the First-tier Tribunal Judge and is before me today a medical report from a Dr M R Amin. He is a general practitioner and he wrote his report on instructions from previous solicitors and interviews with the appellant and his wife. Mr Melvin does not submit that the report is inadmissible but he says that it is a poor report, not referring properly to GP records and therefore should be given very little weight. He refers me in particular to the case of **HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC)** and in particular headnote 5. Headnote 5 says as follows:

> "5. Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records".

9. Mr Melvin relies on that case to say that without GP records the report is of no real value. In my judgment that is not what the headnote says. In my judgment the issue in that particular judgment was the discrepancy that might be afforded between a medical diagnosis made without medical notes and the medical notes themselves.

10. In any event an assessment of the veracity or weight to be given to a particular piece of evidence is not something that I will deal with in the course of an error of law hearing but for present purposes it is worth noting that the GP does provide a diagnosis of post-traumatic stress disorder and then gives some details as to the impact upon the appellant's removal to Pakistan would have on his wife who has PTSD, in particular he says at paragraph 2:

> "Ms Ahmed's mental state is likely to deteriorate thereby compounding her anxiety and increasing her panic attacks and low moods with exacerbation of her PTSD due to the changes in her environment, loss of emotional and care support she receives from her husband".

11. There is some further references to PTSD and the impact of the appellant's removal to Pakistan on his wife. In my judgment however weak Mr Melvin says the evidence is, the judge was required to assess the evidence and deal with it either stating that they accepted or did not accept that evidence as it is a fundamental part of the balancing exercise in Article 8 and may well also be relevant to insurmountable obstacles. In all the circumstances I consider that the judge did not properly assess the medical evidence and did not put any of that information in the judgment and I therefore find that ground 3 is made out and there is an error of law in relation to ground 3.

12. I have heard submissions from the parties in relation to how I should dispose of the case should I find an error of law. Mr Skinner submitted that if he was to win on ground 3 given there requires an assessment of the veracity of the evidence in particular the medical evidence that the case should return to the First-tier Tribunal. He also reminds me of the cases of **ASO (Iraq)** and **Begum**. In response Mr Melvin says that the issues are very narrow and that the Upper Tribunal could deal with the matter.

13. In my judgment and having considered the Presidential Guidance on whether to keep the matter in the Upper Tribunal or the First-tier Tribunal, this is a case that requires reassessment of the evidence in full including an assessment of the medical evidence. As a result it is my judgment this case should be remitted to the First-tier Tribunal for a full hearing on the facts. I preserve no findings of fact from the First-tier Tribunal Judge's judgment.

NOTICE OF DECISION

1. There is a material error of law and the appeal is allowed on all 3 grounds. The judgement of the First Tier Tribunal is therefore set aside.

2. The case is to be remitted to the First Tier Tribunal for a rehearing.

Ben Keith

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 February 2024