IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003114
& UI-2023-003115

First-tier Tribunal No:
HU/07029/2019
PA/00013/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 17th of April 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

SMA
AH
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Holmes, Counsel,
For the Respondent: Mr Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 5 March 2024

DECISION AND REASONS

1. SMA was born on 16 November 1983, and AH on 19 September 1985. Both are citizens of Pakistan. SMA applied for leave to remain on 30 June 2017. On 1 April 2019 that application was refused. AH applied for asylum and ancillary protection on 14 September 2018. That application was refused on 3 June 2021. SMA and AH claimed to be a couple and have a child together.

2. For that reason their appeals were heard together on 11 April 2023 by First-Tier Tribunal Judge Clegg (hereinafter referred to as FTTJ) who found the Appellants were a couple who had a child together and he went on to allow their appeals on Article 8 grounds only with weight being placed on SMA's mental health and the adverse impact there would be on SMA's mental health and their child if they were removed. The FTTJ dismissed AH's asylum and Article 3 claims.

3. Permission to appeal was granted to the Respondent and the application came before Deputy Upper Tribunal Judge Saffer on 21 September 2023 and having heard submissions he found there had been an error in law in the way the FTTJ had dealt with the medical evidence stating as follows:

> " 12. However an assessment of the medical treatment available to ameliorate the risk in the removal process (see for example J v Secretary of State for the Home Department [2005] EWCA Civ 629), and on return (see for example AM Zimbabwe [2020] UKSC 17) and MN (Rwanda) v Secretary of State for the Home Department [2007] EWCA Civ 1064) are an essential part of the balancing exercise as otherwise the assessment of what is likely to happen is conducted in a vacuum. Whilst I accept that Article 8 cases may require a different approach where health questions arise in the context of obstacles to relocation (see for example GS and EO (Article 3 – health cases) India [UKUT] 00397 (IAC)) that does not mean that a lacuna of evidence should be ignored in the proportionality balancing exercise that must be undertaken. That assessment will naturally inform on the impact of the child which was central to the Judge's consideration as stated at [90], and consequently the family life of AH.
>
> 13. Consequently I am satisfied its absence amounts to a material error of law. I accordingly set aside [74(f), 94, and 95] of the decision. All the remaining findings stand."

4. Following this hearing Judge Saffer issued directions relating to the service of further medical evidence.

5. On 15 November 2023 the Appellant's representatives notified the Tribunal that no further oral evidence would be called. The matter came before Deputy Upper Tribunal Judge Alis (hereinafter called DUTJ) on 19 December 2023 but the appeal was adjourned because Mr Holmes had not been provided with the papers from the previous representatives.

6. On 18 January 2024 a Transfer order was made to enable this appeal to be heard by ourselves. We were provided with a 496 page bundle and in addition we had a fifteen and nineteen page bundle.

7. At the hearing before us Mr Holmes submitted the Appellants would be asking that their appeals be allowed under article 8 ECHR claim and he

reminded us that Judge Saffer only set aside paragraphs 74(f) and 94 and 95 of the FTTJ's decision.

8. Mr Holmes submitted the Tribunal had to consider the availability of medical treatment in Pakistan and whether the Tribunal's assessment of this would lead to the Tribunal to reach a different conclusion to that reached by FTTJ.

9. Mr Holmes reminded the Tribunal of the following important points:

    a. The allegation of a proxy test had been resolved in the first-named Appellant's favour and this finding was preserved.

    b. The first-named Appellant had resided here lawfully for five years

    c. The second-named Appellant had resided here lawfully for three years.

    d. One of the Appellants spoke English well.

    e. Both Appellants would be financially independent.

10. The FTTJ set out from paragraph [61] the medical evidence and the acute nature of SMA's medical challenges. She suffered an acute psychotic episode with hallucinations and was an inpatient twice and she also suffered from mixed anxiety and depressive disorder. She received Depot injections which stabilised her condition and the FTTJ had accepted at paragraph [87] SMA encountered profound mental health issues after the birth of her child. At paragraph [80] the FTTJ said the medical evidence gave him sufficient concern and at paragraph [90] the FTTJ said he was concerned how any removal would affect both SMA and their child. Mr Holmes referred to paragraphs [91] to [93] of the decision and submitted that unless the new evidence undermined these findings they should stand.

11. Mr Holmes referred to the challenges the Appellants would face accessing healthcare as outlined in first paragraph on page 3 of the nineteen page bundle. The CPIN suggested only 400 psychiatrists were available in Pakistan which is worse than what this report states. Page 4 explained why the treatment gap exists and what was being done to address the issue and concludes there should be an increased difficulty to access treatment. Page 13 of the same bundle highlighted further issues. Referring to the CPIN Mr Holmes submitted there remains a stigma about mental health issues which are not taken seriously and this would affect how SMA was viewed and her ability to access help. At paragraph 4.12.11 there was information about costs involved in seeking medical help. SMA had had inpatient treatment here and this would cost around PKR 70-80,000 a month in Pakistan and this was money they would not have access to if they were returned. There was a preserved finding that SMA's health was likely to deteriorate and in such circumstances it was likely she would need

inpatient treatment and there would be an issue in meeting the costs. In such circumstances the appeal should be allowed.

12. Mr Tan referred to the findings in paragraphs [74] to [75] of the FTTJ's decision which made it clear there were no very significant obstacles and as AH had no health issues he would be able work.

13. In the fifteen page bundle there was a statement from AH but this simply re-argued his appeal. There was reference to them facing discrimination for having a child out of marriage but this could be overcome by them marrying. The child was just over four years old and had no health issues.

14. Mr Tan reminded us that the FTTJ found the witnesses not to be witnesses of truth. The doctor's letter dated 9 November 2023, in the fifteen page bundle, referred to SMA's last treatment being in 2022 and her concerns had been addressed by the FTTJ. Whilst there was updated medical evidence Mr Tan submitted there was nothing to show the author had considered whether their problems had been exaggerated given they had been found not to be witnesses of truth. Mr Tan submitted limited weight should be attached to this report. There was no further information about hallucinations referred to on page 9 of this bundle and SMA's medication appeared unchanged. There was no reference to Depot injections and all her current medication was available in Pakistan. She could also seek fertility treatment in Pakistan. The previous Tribunal found sarcoidosis was insufficient to engage article 8 ECHR.

15. Despite this being highlighted the Appellant had not provided medical evidence on removal and there was nothing about family support, income or medical support. Mr Tan referred to paragraphs 4.12.1, 4.12.2, 4.12.4, 4.13.1, 4.13.2 of the CPIN. Whilst SMA may require medication Mr Tan submitted it was available in Pakistan and there was no reason why she could not be returned especially as the medication was available without charge.

16. Their child was young and the best interests of the child were to remain with the family. Both Appellants had overstayed and had been here unlawfully and precariously.

17. In response Mr Holmes submitted most of what was argued by Mr Tan had been dealt with and preserved so this Tribunal should not go behind them. At paragraph [91] the Tribunal expressly accepted there would be an impact on her were she returned and there were serious doubts about whether care could be accessed.

DISCUSSION AND FINDINGS

18. Having heard submissions we reserved our decision and indicated that we would give our decision by way of a written decision. In considering the Respondent's grounds of appeal Judge Saffer found there had been an

error in allowing the appeal under article 8 ECHR. Importantly, there was no cross-appeal or direct challenge to any of the FTTJ's findings by either Appellant.

19. Mr Holmes made it clear to us this was an appeal under article 8 ECHR. For this reason we are satisfied that although Judge Saffer set aside, at paragraph [13] of his decision, paragraph 74(f) of the FTTJ's decision this was clearly erroneous because there had been no challenge to this finding and the FTTJ's finding concluded SMA had failed to establish she faced very significant obstacles to reintegrating in Pakistan. The FTTJ had recorded at paragraph [76] that neither Appellant satisfied paragraph 276ADE HC 395. Mr Holmes did not seek to argue paragraph 276ADE(1)(vi) HC 395 was engaged.

20. The other issue, which was clearly at odds with Judge Saffer's findings, was his decision not to set aside paragraph [93] of the FTTJ's decision.

21. The FTTJ had written:

> "I also accept that both Appellants have poor immigration histories, including the Second Appellant breaching his employment restrictions and both Appellants overstaying in the UK for a substantial period after their leave expired. However, I have concluded that the factors surrounding the First Appellant's mental health issues and the welfare of the wholly blameless and young child are sufficiently powerful to weigh against the proportionality of this family being forced to leave the UK."

22. In light of the fact the FTTJ found the article 8 ECHR assessment was flawed we are satisfied that we must decide this issue ourselves because to leave that paragraph standing would undermine the whole point of this appeal. We are satisfied that the issue for us as a panel to consider is whether it would be disproportionate to remove both Appellants and their child.

23. Based on what we have said above the following matters no longer trouble us for the purposes of this appeal:

    a. AH's protection claim was rejected.

    b. The FTTJ's finding over the English language test (dealt with between paragraphs [45] and [54]) remained.

    c. The FTTJ found at paragraph 74(f) that SMA had failed to establish she faced very significant obstacles to reintegrating in Pakistan. This has not been appealed.

    d. The FTTJ found at paragraph 75 that AH had failed to establish he faced very significant obstacles to reintegrating in Pakistan. This has not been appealed.

24. Mr Holmes' submissions centred around the following issues:

    a. SMA's medical condition and the availability of medical treatment and medical help in Pakistan including the ability to pay for such treatment.

    b. Would the Appellants be prejudiced because of their unmarried status?

    c. Best interests of the child having regard to the above issues.

25. The medical evidence, now relied on by Mr Holmes, was found in each of the bundles placed before us. This evidence can be summarised as follows:

    a. Bundle before the FTTJ-

        i. Letter from Greater Manchester Mental health Trust dated 24 August 2020 (page 237 of the main bundle) and letter from Priory Healthcare dated 30 June 2020 (page 244 of the main bundle) which referred to the fact SMA having been diagnosed with postpartum psychotic depression following the birth of their daughter on 18 October 2019. She was discharged on 12 May 2020 but remained under the Perinatal Community Mental Health team. She had been prescribed sertraline and venlafaxine with monthly Depot injections. She was admitted back into hospital on 26 June 2020 after she became extremely agitated but following a change in her medication SMA became more stable and was feeling much better. Following her discharge she was to continue to be given a monthly Depot injection.

        ii. Letter from Northern Care Alliance dated 14 July 2022 (page 94 of main bundle) referred to SMA having been diagnosed with sarcoidosis which had led to a significant "deconditioning and persistent symptoms including breathlessness, generalised malaise and fatigue".

    b. 15 page bundle

        i. Letter from Oldham Care NHS dated 9 May 2023.

        ii. Letter from her doctor's surgery dated 9 November 2023.

        iii. She had attended an appointment at the fertility clinic on 29 September 2023

        iv. CPIN September 2020: Pakistan: Medical and healthcare provisions

c. 19 page bundle

i. This bundle contained reports about healthcare in Pakistan

26. We have considered the totality of the medical evidence and we acknowledge that the Appellant has suffered with mental health issues. There is ample evidence in the original bundle confirming her situation when her appeal came before the FTTJ and the FTTJ had already found (paragraph [91]) SMA suffered a "profound and serious mental health episode in 2019" and remained under the care of mental health services.

27. Further medical evidence has been filed since the original hearing and this can be summarised as follows:

a. Letter dated 9 November 2023 from Dr Ali, SMA's doctor, confirmed that SMA had struggled for some time with her mental health which continued as at the date of the letter. In addition to having been under psychiatric care postnatally she had undergone CBT in October 2022 albeit this was terminated by her mental team as they believed she was too overwhelmed and distressed to benefit due to her ongoing immigration claim. She had developed hallucinations and was awaiting an assessment by Birch Hill hospital later that week. She was worried about being removed to Pakistan and was extremely anxious how both she and her daughter would be perceived given her daughter had been conceived out of wedlock.

b. Letter from NHS Pennine Care dated 9 November 2023 confirmed SMA was prescribed Venlafaxine 150mg for depression and Aripiprazole 10mg for anti-psychosis.

c. A letter from NHS Oldham confirmed SMA was attending the hospital with a diagnosis of sarcoidosis and noted she other symptoms including cough, breathlessness, general malaise alongside stress, visual and joint changes.

28. This medical evidence confirmed the Appellant was still being prescribed medication for depression and psychosis. The 2020 CPIN report confirmed that both Venlafaxine (paragraph 5.8.1) and Aripiprazole (see paragraph 5.3.1) remained available in Pakistan. Paragraph 5.1.1, of the same report, suggested that this medication was available free of charge in public sector hospitals but due to poor availability of medicines a person requiring medication might have to obtain their medication from the private sector. We note that AH was fit and healthy and there would be no reason why he could not obtain work if the Appellants were returned to Pakistan,

29. We were not provided with SMA's medical records which would have provided us with a more circumspect view of SMA's current position including full details of what medication she was currently prescribed and for the period this had been prescribed together with details of whether SMA was engaging with her doctors or anyone else.

30. This lack of evidence undermines Mr Holmes' argument about the effect removal would have on SMA, AH and their child because single letters, without reference to medical notes, simply provided us with the position as at the day the letter was written. This makes it difficult for us to accept Mr Holmes' submission that SMA's condition is as poor as she claimed. There was no evidence of any recent inpatient treatment which is of course is relevant when assessing whether she needed inpatient treatment in Pakistan.

31. We considered the articles contained in the nineteen page bundle. We accept the facilities in Pakistan are probably sub-standard when compared to that available in this country. However, looking at the medical evidence contained in the recent letter compared to what she was taking when she was diagnosed with post-natal depression it would seem that she remains on the same prescription of Venlafaxine (see Page 275 of original bundle) and was no longer receiving Depot injections or Sertraline albeit she was now on a low dose of Aripiprazole. This suggests to us that her condition is either stable or improved.

32. We therefore make the following findings about SMA:

    a. Her health would at worst be similar to what it was at the time of the last hearing, but more likely to have improved for the reasons set out above.

    b. Neither SMA nor AH wanted to leave the country and SMA's doctor stress the detrimental effect removal would have on her, but this is based on what the person was told.

    c. SMA would not be removed on her own and any removal would involve the removal of SMA, AH and their child. They would therefore be removed as a family which would of course to some extent ameliorate the effect of removal. The best interests of the child remain with her parents.

    d. SMA's medication is available in Pakistan and there are public hospitals who can provide treatment albeit they are under a lot of pressure.

    e. There was no evidence that her medication would be unaffordable even if SMA had to pay for it. AH could obtain work and use his income to support SMA and his child.

f. The Appellant had not received CBT since around October 2022 and her worry about how she and her daughter would be perceived could be alleviated by SMA and AH marrying. There was evidence she had been diagnosed with sarcoidosis but that evidence dated back to May 2023 and had previously been found insufficient to engage article 8 ECHR. A letter dated 9 November 2023 indicated SMA had been involved with mental health services for the past four years but failed to provide details about her actual involvement.

g. If AH was concerned about returning home then they could return and live in a different part of Pakistan.

33. In the original Tribunal bundle the parties included documents from the family court. A statement from AH outlined SMA's mental health in July 2020 and referred to the fact their daughter was illegitimate and that his family would not accept their daughter. The statement did not tackle the issue of SMA and AH marrying because AH stated his family wanted him to marry someone else. The statement also referred to the fact the local authority had taken care proceedings and that at the time of those proceedings SMA was unable to look after their daughter. The family court made an order placing SMA and AH's daughter with the Appellants with the local authority also being given a twelve month supervision order expiring on 20 October 2021. We noted that no further evidence has been provided about the child since the supervision order ended. If the Appellants were seeking to place weight on this issue we would have expected further evidence from the local authority.

34. Given the supervision order ended over two years ago and there does not appear to have been any further input from the Local Authority we concluded SMA and AH were capable of looking after their daughter both here and in Pakistan.

35. Although Article 8 (1) is engaged, the Rules were not met for the reasons given above. The public interest lies in the maintenance of effective immigration controls. To strike a fair balance between the competing public and individual interests involved, we adopt a balance sheet approach:

a. We weigh the following public interest factors against the Appellants:

i. The maintenance of effective immigration controls is in the public interest. The Appellants came on visas in the knowledge they were not a route to settlement. We do not accept that there is any good reason for a dilution of the strong public interest.

ii. The Appellants have utilised NHS facilities.

b. We weigh the Appellant's private life factors in their favour in particular:

i. The Appellants' child was born in this country and has never lived in Pakistan.

ii. The Appellants have been here for a number of years which has enabled them to form some connections and possibly make friendships in the UK.

iii. SMA has suffered with her mental health for a number of years and has been an inpatient.

iv. The initial difficulties the Appellants perceive they will face returning to Pakistan, even though it has previously been found they do not amount to very significant obstacles.

Nevertheless, we have had regard to the statutory consideration that little weight should be given to a private life established by a person at a time when the person is in the UK unlawfully or their immigration status is precarious.

36. We find that the factors raised by the Appellants do not outweigh the public interest because in a case such as this the essential elements of private/family life on which the Appellants rely are capable of being replicated in Pakistan. SMA will be able to access hospital and medication in Pakistan.

37. Looking at the overall picture of the circumstances as we have found them to be and for the reasons we have already given, we find the factors raised by the Appellants do not outweigh the public interest in removal. We find the scales fall on the side of the public interest and the decision is proportionate.

38. Notwithstanding their private and family life in the UK and the difficulties they perceive they will face on return to Pakistan, the decision does not lead to unjustifiably harsh consequences and does not breach Article 8 ECHR.

Notice of Decision

The decision of the First-tier Tribunal did involve the making of an error on points of law in relation to article 8 ECHR only.

That decision was previously set aside by Judge Saffer

We have remade the decision and dismiss all the appeals.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber
19 March 2024