



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004136

First-tier Tribunal No: HU/56935/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

5th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

Gohar Qayyum Chughtai
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Rehman, Counsel; Lawfare Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 18 January 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Head, promulgated on 23rd May 2023, dismissing his human rights appeal on the basis of Article 3 and Article 8 ECHR.
2. The Appellant applied for permission to appeal on the sole ground that the judge had erred in law by failing to properly consider the medical evidence pertaining to his risk of suicide on return to Pakistan under Article 3 ECHR.
3. Permission to appeal was granted by First-tier Tribunal Judge Bibi in the following terms:
 - “1. The appellant seeks permission to appeal, against a decision of the First-tier Tribunal Judge Head who, in a Decision and Reasons promulgated on 23 May 2023 dismissed his appeal against the Secretary of State’s decision to refuse the appellant leave to remain.
 2. The grounds assert in summary that the Judge materially erred in his findings, that the Judge has failed to properly consider the medical evidence. The Judge noted (paragraph 30-32) the expert evidence provided by the appellant. The Judge then conclude that the appellant has failed to advance or establish a case to be at risk of suicide on return to Pakistan. The Judge’s conclusions are inconsistent with the expert evidence of Dr Abdul Hameed Latifi Locum Consultant psychiatrist.
 3. There is an arguable error of law that has been identified which merits further consideration. There is a reasonable prospect that a different Tribunal would reach a different decision.”
4. Before me Mr Avery confirmed that the appeal was contested and that there was no Rule 24 response from the Respondent.

Findings

5. At the conclusion of the hearing I reserved my decision, which I now give. I do find that the decision demonstrates material errors of law, such that it should be set aside in its entirety.
6. In respect of the sole ground put forward, as summarised above, the grounds succinctly argue that the judge erred in law by failing to properly consider the medical evidence, noting in particular, paragraphs 30 to 36 of the judge’s decision and reasons.
7. Considering those paragraphs in the first instance, I observe that the judge noted the appropriate test to be applied in line with *AM (Zimbabwe)* [2020] UKSC 17 at paragraph 28 of his decision before going on to consider the Appellant’s medication at paragraph 29 and then, most important of all, the Appellant’s various medical reports at paragraphs 30 to 34; in particular at paragraph 30, the judge notes that he has considered the reports of the Ms Raeoef, a psychologist, and Dr Mehrotra, a consultant psychiatrist. At paragraph 31, the judge confirms having considered the report of Dr Latifi, a further independent psychiatrist, as well as the Appellant’s GP’s medical records. At paragraphs 32 to 34, the judge then undertakes his short consideration of the content of the above reports. At

paragraph 32, the judge notes the Appellant suffers from major depression and anxiety which fall under the same diagnosis, and that he smokes cigarettes and marijuana. At paragraph 33, the judge notes Dr Latifi's professional opinion that the Appellant requires longer and more structured therapy, such as cognitive behavioural therapy (CBT) and that the Appellant already receives his treatment over the phone as well as taking antidepressant medication. Finally at paragraph 34, the judge notes Dr Latifi's comment that the prominent features of the Appellant's depression includes persistent low mood, anxious and empty feelings, anergia, anhedonia, insomnia, poor appetite, poor concentration, hopelessness and fleeting suicidal thoughts. The judge concludes this paragraph by noting that when asked the Appellant denied to Dr Latifi that he had any intent or plan to end his life. Then at paragraph 35, the judge concludes that the Appellant has not "either advanced or established a case to be at real risk of suicide on return to Pakistan". Finally at paragraph 36, the judge states that he has considered the country expert report and CPIN in relation to medical care, but does not find that this assists the Appellant in showing he would be unable to access appropriate care on return.

8. Having looked at and set out the judge's succinct findings above, I do find that there is a material error, particularly in respect of the judge's finding that the Appellant "did not advance or establish a case to be at real risk of suicide on return to Pakistan" (see paragraph 35 of the decision). To illustrate and make good this submission, Counsel for the Appellant took me to the Appeal Skeleton Argument (ASA) before the First-tier Tribunal dated 11th January 2023 which, at paragraph 30(2), states that "The appellant would be at increased risk of self-harm or suicide" as being one of the many issues that the judge needed to consider. Therefore, I can clearly see from the ASA that the Appellant *did* put forward as an issue that his case was that he would be at increased risk of self-harm or suicide on return to Pakistan.
9. As to whether or not that case was arguably established and whether the judge has failed to consider any relevant evidence going to that issue, I note that the judge mentions and demonstrates knowing that Dr Latifi stated that the Appellant had "fleeting suicidal thoughts". In respect of that evidence, I note that the Appellant's witness statement at paragraph 8 mentions a previous suicide attempt (which does not feature in the judge's assessment - however, nor surprisingly does it appear to feature in the expert reports put forward by the Appellant, which is a matter that may require exploration in a further hearing as it appears to be of obvious relevance to the risk of self-harm on return) and which also mentions at paragraph 22 that the Appellant has constant suicidal thoughts. Added to this, there was a witness statement from the Appellant's sister which also states at paragraph 3 that the Appellant has suicidal thoughts, and a further witness statement from the Appellant's aunt which states at paragraphs 2 and 5 that the Appellant turns to his aunt for support when he has suicidal thoughts. Therefore there was clearly witness evidence before the judge of these fleeting suicidal thoughts from the Appellant, his sister and his aunt which may have established an arguable case of a real risk of suicide on return to Pakistan which the judge failed to consider.
10. As to the expert view on this issue and whether that established an arguable case of a real risk of suicide on return to Pakistan which the judge failed to take into account, I note Dr Latifi's report states on internal pages 45 to 46 that the ninth matter, which he was to address (as put to him by the Appellant's instructing solicitors) was "the likelihood of (the Appellant) attempting suicide if

returned to Pakistan and/or there being self-inflicted harm on the part of (the Appellant)?" Moving onward, at page 10, I note that Dr Latifi under the heading of "Mental State Examination", summarises the Appellant's suicidal/homicidal/violent thoughts in the following terms: "He experiences fleeting suicidal thoughts but denies current plans or intent to end his life. He denies thoughts of harming others". It is clear that this passage was seen by and noted by the FtTJ in his consideration of the papers given his consideration of there being "fleeting suicidal thoughts". What does not appear to be considered is the further assessment at page 13 of the report wherein, under the heading "What will the effects be on our client's mental health if his support group is removed from his life?", Dr Latifi states inter alia "Mr Chughtai is a vulnerable person; his clinical state is fragile and prone to a rapid deterioration with marked anxiety, dipping of mood and escalation of suicidal thinking; without the current support he will not be able to cope." In addition Dr Latifi mentions at page 14 of his report his conclusion on the risk assessment, and which states inter alia as follows:

"Although during my assessment Mr Chughtai denied any active plan or intention to commit suicide but (sic) due to his current presentation i.e., severe depression, pessimistic thoughts about present and hopelessness about future, he remains a moderate risk of suicide/self-harm. This risk will increase further if he is returned to Pakistan and the current support he receives is withdrawn".

Therefore it is clear from Dr Latifi's report that, despite the Appellant confirming that he did not have a plan to end his life on return to Pakistan, the doctor still opined that due to his current presentation he remained a moderate risk of suicide/self-harm, and that this risk would increase further if returned to Pakistan without his current support network. Therefore, to my mind, there is a material omission in the judge's assessment of Dr Latifi's report at least, which in my view goes to the heart of the findings, particularly as the judge notes at paragraph 34 of his short consideration of the expert evidence, that the Appellant denied any intent or planned to end his life, however at the same time, fails to note the expert's view *notwithstanding that denial of intent* or plan to end his life.

11. That is not the only omission in the judge's consideration. I was also taken to the Harris Associates report which, at paragraphs 7.5 to 7.6, discusses the Appellant's mood and mental state, which does not appear to have been considered. Additionally, there does not appear to be consideration of Dr Mehrotra's statement in his report at paragraphs 8.3 under the heading clinical factors, where he mentions that the Appellant has active symptoms of major mental illness including, inter alia, a diagnosis of depression which significantly increases his risk, current active symptoms including pessimism and suicidal desire, which are on-going and "would escalate to a suicidal plan if he is returned to Pakistan". Therefore in the opinion of these two experts, there was a risk of the Appellant's symptoms escalating to a plan to commit suicide and the statement by the judge at paragraph 35 that he has not established a real risk, cannot be complete without explicit consideration of those specific opinions reached by the expert, especially in the absence of reasons for rejecting those opinions. Whilst Mr Rehman also took me to references from the report from Ms Raeoef and Dr Holden's report, as to the circumstances on return to Pakistan and the approach to suicidal ideation/attempts and the facilities available there, although the omission to consider these is a material error it would not be without the previous omission. Therefore, I find that the omission of considering

the expert opinions as to the circumstances in Pakistan merely compounds the material error already identified.

12. Although Mr Avery tried to persuade me that the conclusions reached by the experts were vague, I cannot rule out the argument that the judge may have reached an alternate conclusion had the judge considered the entirety of the expert's evidence before concluding there was no real risk on return.
13. I also raised with both representatives my provisional view - which neither representative sought to persuade me to depart from - that the judge had also failed to consider the Upper Tribunal reported decision of *MY (Suicide risk after Paposhvili) Occupied Palestinian Authority* [2021] UKUT 232 (IAC), which makes clear in its headnote that there are several factors to be followed (including consideration of the risk factors identified in the case of *J v Secretary of State for the Home Department* [2005] EWCA Civ 629, which include an assessment of the severity of treatment that the Applicant will suffer if removed, a causal link between removal and the treatment that the Applicant will suffer that contravenes Article 3, whether the treatment is the direct or indirect responsibility of public authorities of the country of origin, the recognition that an Article 3 claim can succeed in which the risk of suicide is objectively well-founded and finally whether the country of origin has effective mechanisms to reduce the risk of suicide). Had the authority of *MY* been considered and applied, it would have also alerted the judge to the potential omissions in the short findings that were made at paragraphs 28 to 36 of their decision.
14. There was no challenge to the judge's findings on family and private life, and therefore those passages of the decision shall stand.
15. I therefore find that the judge has materially erred for the reasons given above.

Notice of Decision

16. The Appellant's appeal is allowed.
17. The appeal is to be remitted to the First-tier Tribunal to be heard by any judge other than First-tier Tribunal Judge Head, solely in respect of the issue of Article 3 ECHR and whether or not there is a real risk of suicide and/or self-harm to the Appellant on return to Pakistan.

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber