



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/27366/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 13 November 2017

Decision & Reasons Promulgated  
On 15 November 2017

Before

UPPER TRIBUNAL JUDGE PITT

Between

GS

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lemer, Counsel, instructed by Lupins Solicitors  
For the Respondent: Mr Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the disclosure of his medical condition.
2. This is an appeal against a decision dated 26 September 2016 of First-tier Tribunal Beg which refused the Article 8 ECHR medical claim of the appellant.

3. GS is a national of India, born in 1985. He came to the UK in 2009 with leave as a student. He was granted further leave to remain on medical grounds from 12 June 2013 to 31 January 2015. His application for further leave on medical grounds was refused and he appealed, the appeal being heard before Judge Beg on 14 September 2016.
4. There is no dispute as to the key facts. Very sadly, GS has a serious and rare illness, metastatic paraganglioma or neuro-endocrine cancer. His Consultant at University College Hospital indicated in a letter dated 4 July 2016 that the appellant's condition was "incurable but that treatments from time to time as required could control the disease and delay its progress for long periods of time". The Consultant also indicated that the illness "requires very specialist multi-disciplinary care" which "will not be available" in India and expressed the view that where the appellant would not be able to pay for treatment in India, "his life expectancy would be significantly shortened".
5. Before the First-tier Tribunal it was conceded that the Article 3 ECHR medical claim was not made out; see [10]. That concession was made as the case law at that time indicated that "Article 3 medical cases are limited to deathbed cases".
6. The Article 8 ECHR medical claim was argued on the basis that the appellant's private life amounted to the "separate or additional factual element" required for an Article 8 medical case to succeed; see [86] of GS (India) v SSHD [2015] EWCA Civ 40.
7. After conducting a proportionality assessment, Judge Beg did not find that the Article 8 claim was made out. She noted that case law indicated that the absence of inadequacy of medical treatment in India alone could not make out a breach of Article 8; see [19] and [24]. She found that the evidence did not indicate an absence of treatment in India in any event and that his family there could offer support; see [27]. She found that the appellant could seek employment in India, could access some treatment, would have family support and knew of his condition before coming to the UK; see [37].
8. The grounds for permission to appeal the decision of Judge Beg made to the First-tier Tribunal argued that an error of law arose as the appellant would not be able to access treatment in India as he could not pay for it. The grounds also maintained that the judge erred in finding that the appellant had known of his condition before coming to the UK and weighing that against him in the proportionality assessment. Permission was refused in a decision dated 8 May 2017, issued on 9 May 2017.
9. By the time that the appellant renewed the application for permission to appeal in the Upper Tribunal, the European Court of Human Rights (ECtHR) had decided the case of Paposhvili v Belgium (41738/10). In that case the Grand Chamber set out a restatement of the test in Article 3 medical cases. At [183] for example:

"183. The Court considers that the "other very exceptional cases" within the meaning of the judgment in *N. v. the United Kingdom* (§ 43) which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he


or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy. The Court points out that these situations correspond to a high threshold for the application of Article 3 of the Convention in cases concerning the removal of aliens suffering from serious illness.”

10. In the grounds of appeal lodged on 19 May 2017, the appellant sought to rely on Paposhvili, arguing that it altered materially the approach the judge should have taken to the availability of treatment in India and to wider issues such as family support and ability to work.
11. I granted permission on all grounds in a decision dated 12 July 2017, issued on 20 July 2017, noting the Paposhvili point in particular.
12. By the time of the hearing on 13 November 2017, thinking on the correct application of Paposhvili had progressed somewhat. Mr Lemer provided a preliminary note dated 12 November 2017. It was conceded that legal precedent meant that Paposhvili could not be applied by the First-tier Tribunal or Upper Tribunal in the manner sought by the appellant. The Tribunal remained bound by the superior domestic authorities of GS (India), D v United Kingdom [1997] ECHR 30240/96 and N v Secretary of State for the Home Department [2005] UKHL 31. Where that was so, the appellant applied for a certificate under s.14A of the Tribunals Courts and Enforcement Act 2007 (TCE 2007), that is permission to “leapfrog” the appeal to the Supreme Court.
13. I declined to make a certificate under s.14A of the TCE 2007. The power is discretionary. In my judgement, the points the appellant wished to argue were appropriate for consideration by the Court of Appeal. That is particularly so in this case which is an Article 8 ECHR claim only, Paposhvili addressing medical cases within the context of Articles 2 and 3.
14. I noted that in the event of a s.14A certificate being granted, the appellant also sought to apply to vary his grounds of appeal so as to include a challenge on Article 3 ECHR grounds. For completeness, I should indicate that I refuse any application to amend the grounds to include Article 3 ECHR. The point was abandoned before the First-tier Tribunal. The application to amend and re-instate an Article 3 appeal was not made in any of the grounds of appeal and was raised only on the day of the error of law hearing before me. It is not appropriate to reintroduce a substantive head of claim at this stage of the proceedings. It is open to the appellant to make a fresh claim based on Paposhvili if he wishes.
15. In conclusion, without the application of Paposhvili, the grounds do not show that the First-tier Tribunal erred in law. The conclusions that some treatment is available in India and that the appellant would have family support there and could work are not shown to be irrational. The First-tier Tribunal was also entitled to conclude that the appellant’s private life in the UK consisted of a group of supportive friends and the medical treatment the appellant has been receiving and that where that private

life was always precarious, the decision was not disproportionate. The appellant's knowledge of his illness before he came to the UK is not shown to be a determinative factor in the appeal.

DECISION

The determination of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: 

14 November 2017

Upper Tribunal Judge Pitt