Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02882/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13 November 2018	**On 26 November 2018**

Before

UPPER TRIBUNAL JUDGE WARR

Between

KD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Fonladvand (Legal Representative) MAAS
For the Respondent: Ms K Pal

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 1 January 1940. He claims to have arrived in this country in 2003 and made an application on 26 November 2005 for indefinite leave to remain outside the Rules. This application was refused in 2009. His appeal against that decision was dismissed by Immigration Judge Neyman on 15 December 2009. Further applications followed and the decision giving rise to the instant proceedings was taken on 31 January 2017 when the respondent refused the application both under the Rules and on human rights grounds. In

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relation to the appellant's claimed fear of return to Pakistan the respondent pointed out that if he had such a fear of returning he should make an appropriate application. Furthermore Judge Neyman had found his account to be lacking in credibility. A particular feature of the appellant's case is his medical condition but the Secretary of State did not consider that the appellant's case reached the high threshold set out in **N v Secretary of State [2005] UKHL 31**. There was treatment for mental health conditions in Pakistan. It would not be unreasonable for the people who currently assisted the appellant in the United Kingdom to continue doing so in Pakistan and it was also not unreasonable to expect any family or friends in Pakistan to assist and support him as well.

2. The appellant appealed his decision and his appeal came before a First-tier Judge on 30 May 2018. The judge helpfully summarised the grounds in the appellant's case as follows:

> "15. The Appellant is now aged 77 years and suffers from various medical conditions including hypertension, hyperlipidaemia, osteoarthritis of the knees, ATI in 2009 as well as heart condition and fatigue. He suffers from moderate/severe depression with psychotic features and insomnia. He is taking medication for this and under the treatment of Ealing mental health team. His GP has referred him to the Cognitive Impairment and Dementia team after displaying dementia symptoms.
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> 16. The Appellant has continuously lived in the UK now for over 14 years. He has made friends in the local community and the mosque who support him emotionally and financially. They provide him with food and accommodation. He is currently a lodger at the house of a family who have befriended him.
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> 17. The Appellant has no family or friends to return to in Pakistan. He lost property in Azad, Kashmir in the 2005 earthquake which also killed his wife and three children. His eldest son has already been killed in the violence which had followed the sacking of the Chief Justice of the Supreme Court in Pakistan. Those who killed his son then threatened the Appellant forcing him to flee Pakistan.
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> 18. The Appellant has also lost his brother and sisters. The closest he has to family are his friends in the UK. With his deteriorating mental health and other issues there would be very significant obstacles to him returning and integrating in Pakistan. He wishes to maintain and continue to enjoy his family and private life in the UK without interruption."

3. The judge heard oral evidence from the appellant. The judge noted the previous determination by Judge Neyman and reminded himself of the principles in **Devaseelan [2002] UKIAT 00702**. The judge notes in paragraph 25 of his decision that the case then was similar to the one before him in that the appellant's wife and three of his four children were killed during the earthquake in Kashmir in 2005, that his elder son was killed in political violence, and that the appellant had been threatened by those he blamed for his elder son's death and that in the UK the appellant was suffering from various medical conditions and was being supported

and accommodated by good people and the community. The judge then set out the relevant parts of the determination of Immigration Judge Neyman as follows:

> "39. …He has totally failed to explain why the people he says he lives with have lodged him and at least partially fed him, for no consideration at all. I find it very likely that he has deliberately attempted to deceive the Tribunal on this issue and that attempted deception counts against his credibility.
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> 40) The Appellant was asked to explain how he knew that his wife and three children were all killed in the earthquake in Pakistan as claimed. His replies were evasive and unsatisfactory and had an adverse effect on his credibility. In any event, there is no satisfactory independent evidence that any of his family has been killed in Pakistan, by an earthquake or by anything/anyone else. In these circumstances, the Appellant has failed to discharge the burden of proof to show that any of his family in Pakistan has died as a result of an earthquake, or for any other reasons claimed.
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> 41) Given the various significant adverse credibility findings made above, the Appellant has failed to show that he is a credible witness, or that anything he says can be taken at face value. For these reasons, the Appellant has failed to show that his son was murdered in Pakistan, or that anyone has ill-treated him in any way in Pakistan or threatened him, or that he fears ill-treatment from anyone in Pakistan for any reason whatsoever. In these circumstances, the Appellant has failed to discharge the burden of proof to show that anyone in Pakistan would subject him to any ill-treatment whatsoever in that country or that anyone there would persecute him for any reason whatsoever. For this reason, his asylum appeal must fail."

4. The First-tier Judge noted that Judge Neyman had also dismissed the appellant's Article 8 claims and found in relation to the medical evidence that it was not established that these issues could not be dealt with satisfactorily in Pakistan.

5. The First-tier Judge found that the appeal before him was basically on the same grounds as those before Immigration Judge Neyman. The only fresh facts were that the appellant was now eight years older and claimed to be suffering from depression and some cognitive impairment.

6. The judge commented in paragraphs 29 and 30 of his decision as follows.

> "29. Whilst I follow and adopt Immigration Judge Neyman's findings about the Appellant's lack of credibility there is in fact fresh evidence available today that reinforces the adverse credibility finding.
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> 30. In the Appellant's bundle of documents is a letter from West London Mental Health to the Appellant's GP and dated 6 April 2017. This sets out some of the Appellants' background history and as related by him to the consultant psychiatrist. The consultant psychiatrist states that the background history is very unclear. This refers to him giving different accounts of what

happened to his family in Pakistan and it refers to an older son being killed by the Taliban. It also refers to him having lost contact with his wife and the rest of the family as they dispersed. This is of course substantially different from his original claim that his wife and three children have been killed in the Kashmiri earthquake."

7. The judge notes that matters had become further confused as a result of fresh documentation presented by the Home Office representative. Having considered this material the judge found as follows:

"35. I am satisfied that this Appellant has been employing deception not only in his immigration appeals but also with regard to his identity and immigration applications. This latest documentation endorses Judge Neyman's earlier findings that this Appellant was not credible and had failed to prove his claims.

36. The Appellant had claimed to have made friends in the local community and mosque who have supported him emotionally and financially. There has been no attendance by any of these friends today. I find it suspicious that if a person who has the generosity and goodness to provide accommodation and support for an elderly person yet is not prepared or able to come to an appeal hearing to give evidence. This lack of witness and supporting evidence points towards the situation not being as claimed by the Appellant.

37. Neither do I accept his claims to have no family contact or links with Pakistan. He has totally failed to show that this is the case. I do not accept there would be very significant obstacles to his integration into Pakistan. He therefore cannot satisfy the requirements of paragraph 276ADE.

38. The Appellant has also made claims with regard to his state of health and under Article 3 of ECHR. As in the previous appeal he has failed to show that his various health issues cannot be dealt with in Pakistan and that the medication he is taking would not be available there. Indeed the only evidence of the availability of treatment and medicines in Pakistan is that contained in the refusal letter and which shows it is. The threshold that an applicant is required to surmount is illustrated in the case of **N v SSHD [2005] UKHL 31**. This is a very high threshold and the Appellant has not been able to show that he is in the terminal stage of any life threatening illness. He has claimed to have depression but the evidence of this is not totally convincing. The consultant psychiatrist's report that I have already mentioned and dated 6 April 2017 refers to him continuing with the combination of antidepressants and anti-psychotic medication. The consultant stated, 'I am not convinced that there is enough evidence to suggest that he has any significant cognitive disorder. His Rudas score of 6/30 is not reflective of his cognitive ability. I am discharging him from the Cognitive Impairment and Dementia service but I have arranged to review him again in my recovery clinic on 27 July 2017 at 10am at the Limes.' The only other evidence are some appointment letters from the Limes giving the Appellant appointments on 26 April 2018 and 7 June 2018. There

> is no evidence that he attended the appointment on 26 April nor any further medical reports."

8. In relation to the appellant's case under Article 8 the judge directed himself correctly by reference to **Razgar [2004] UKHL 27** and concluded as follows:

> "40. The Appellant has failed to show that he has any family life in the UK. I accept that he will have some degree of private life but the true extent of this is not known given his deception and lack of credibility. Nevertheless I assume that his claims of spending time at his local mosque is correct. This by itself is not of such gravity as to engage Article 8. I find that the Respondent's decision is a lawful one and it was made with a legitimate aim in mind, that is the maintenance of effective immigration control.
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> 41. Finally, I find that the Respondent's decision is a proportionate one. The need is this instance is to maintain effective immigration control and far outweighs any limited interference the Appellant may have with his private life in the UK. Even taking the Appellant's claim at its highest he appears to have spent his time within the Pakistani Muslim community so he will certainly not have forgotten the customs, culture and language of his mother country. His main language and mother tongue is Urdu and it was obvious during the course of the Appeal that his knowledge of English was very limited. He will be able to attend a mosque of his choice on return to Pakistan and no doubt follow the same routine and activities there."

9. Accordingly the judge dismissed the appeal both on human rights grounds and under the Rules.

10. There was an application for permission to appeal in which it was complained that the decision was irrational and perverse and against the weight of the evidence. It was "absolutely obvious" that the appellant's difficulties would mean that he would face very significant obstacles to integration into Pakistan and there had been "unsound scepticism" in relation to the compelling evidence presented. The appellant's dementia had not been taken into consideration properly. The documents presented by the respondent at the hearing appeared to raise an issue of identity theft. Reference was made to the judgment of the Grand Chamber of the European Court of Human Rights in **Paposhvili v Belgium (13 December 2016) [2017] Imm AR 867**. Permission to appeal was granted by a First-tier Judge on 20 September 2018. On 5 November 2018 the Secretary of State filed a response in which it was submitted that the First-tier Judge had considered all relevant matters.

11. At the hearing Mr Fonladvand argued that the appellant was aged between 77 and 78 and had been in the UK for fourteen years and had no ties in Pakistan and it was obvious that the appeal should have been allowed on human rights grounds. He drew attention to the Rule in relation to those who had been in the country for twenty years. The appellant suffered from multiple illnesses.

12. Ms Pal noted that in paragraph 30 of the decision the judge had referred to the psychiatrist finding that the appellant's background history was very unclear and in paragraph 38 the judge had noted the limited evidence regarding the appellant's mental health. The judge had correctly addressed himself by reference to **N v Secretary of State** as had been confirmed in subsequent cases such as **AM (Zimbabwe) v Secretary of State [2018] EWCA Civ 64**. The judge had been correct to find that there would not be significant obstacles on return to Pakistan. The appellant was a national in Pakistan who had lived there until aged over 60. He would be familiar with the customs. There was no material error of law in the judge's decision.

13. In response Mr Fonladvand submitted that the appellant was suffering various illness for which treatment might be available but he would not have the support in Pakistan that he had from the Health Service in the United Kingdom. He always depended on other people and to remove him would be unreasonable at his age. He needed to be treated with dignity and compassion. He had suffered from minor strokes in the past.

14. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me and remind myself that I can only interfere with the decision of the First-tier Judge if it was flawed in law.

15. The First-tier Judge correctly directed himself by reference to the guidance in **Devaseelan**. Judge Neyman had found that the appellant had failed to show he was a credible witness "or that anything he says can be taken at face value." As the First-tier Judge found, the appeal before him was basically on the same grounds. The judge concluded that the material lodged before him did nothing to dispel the findings of Judge Neyman and indeed as he puts it reinforced those findings. The judge had in mind that the appellant was some eight years older and that he claimed to be suffering from depression and some cognitive impairment.

16. The judge deals satisfactorily with these issues in paragraph 28 of his decision. He directed himself correctly as Ms Pal submitted by reference to **N v Secretary of State**.

17. The case **of N v Secretary of State** is binding as has recently been confirmed in **MM (Malawi) [2018] EWCA Civ 2482**. As Ms Pal points out the judge properly considered the medical evidence and the fact that the consultant was not satisfied that the appellant had any significant cognitive disorder. The judge had also referred to the consultant psychiatrist stating that the appellant's history was very unclear. The judge notes that none of the appellant's friends had attended the hearing and the lack of witness and supporting evidence "points towards the situation not being as claimed by the appellant." It was open to the judge to reject the claim that the appellant had no family contact or links with Pakistan and to find there would be no very significant obstacles to his integration there. The judge did not materially err in law in concluding as

he did and in finding that the decision of the respondent was proportionate. Mr Fonladvand referred to the rule covering 20 years residence but I do not find that this assists the appellant given he has not achieved such a period of residence. There is no irrationality in the decision as claimed in the grounds – to establish perversity is no light matter. Further permission to appeal was granted with the emphasis on the judge’s treatment of the medical evidence and it is clear the judge carefully took into account the medical evidence when making his findings.

18. The decision of the First-tier Judge was not materially flawed in law and this appeal is dismissed.

19. It is appropriate in this case to make an anonymity order.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

TO THE RESPONDENT
FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date 23 November 2018

G Warr, Judge of the Upper Tribunal