Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: HU/11844/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC	**Decision & Reasons Promulgated**
On 01 December 2020	**On 09 December 2020**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MUHAMMAD ZEESHAN

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr S Vokes, instructed by Mamoon Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Pakistan with date of birth given as 17.12.91, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 6.11.19 (Judge Parker), dismissing his appeal

against the decision of the Secretary of State, dated 28.6.19, to refuse his application made on 18.1.19 for leave to remain in the UK on human rights (private life only) grounds.

2. The appellant has been in the UK since 2012, with valid Tier 4 student leave extended through to 18.1.19, the date of his application for leave to remain, the refusal of which is the subject of this appeal. He sought more time to complete education in the UK, relied on health issues, and claimed to fear for his life and safety if returned to Pakistan, on the basis that his father obtained a loan to finance his studies in the UK but was not in a position to repay the loan, so that the creditors will humiliate and cause harm to his family and himself.

3. The appellant could not meet the requirements of the Rules for further student leave. The respondent considered paragraph 276ADE(1)(vi) but concluded that there were not very significant obstacles to his integration in Pakistan. Neither were there any exceptional circumstances within or without the Rules. The application was also refused under paragraph 322(1), as leave to remain was sought for a purpose not covered by the Rules. In relation to the claimed fear for his life, he was invited to make a claim for international protection but declined to do so. The respondent considered that his health issues, including a diagnosis of epilepsy as well as mental health issues of anxiety, depression, and suicidal ideation, could not meet the very high threshold of article 3 ECHR and he would, in any event, be able to access appropriate treatment in Pakistan.

4. The First-tier Tribunal considered the appellant's circumstances within the Rules, under paragraph 276ADE, and outside the Rules, applying R (Razgar) v Secretary of State for the Home Department [2004] UKHKL 27, and consideration of section 117B of the Nationality, Immigration and Asylum Act 2002. Article 3 medical grounds were not relied on at the appeal hearing. Ultimately, for the reasons set out in the decision, the judge concluded that the respondent's decision was proportionate to the appellant's article 8 rights and, therefore, dismissed the appeal.

5. The grounds of application for permission to appeal first assert that the judge erred in assessing compelling compassionate circumstances. The grounds refer to the appellant's epilepsy and that in consequence he is not fit to travel. It is also argued that the judge erred in consideration of section 117B of the Nationality, Immigration and Asylum Act 2002 in failing to give credit for the ability to speak English and lawful residence, and that in considering that the appellant was a burden on public funds, the judge ignored that under the terms of his student leave he was permitted to access NHS treatment.

6. Permission to appeal was refused by the First-tier Tribunal on 1.4.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge

Allen granted permission on 7.6.20, stating simply that the "grounds identify arguable points of challenge to the judge's decision."

7. I have carefully considered the decision of the First-tier Tribunal in the light of the submissions made to me at the remote hearing and the grounds of application for permission to appeal to the Upper Tribunal.

8. At the outset, I have to agree that the impugned decision is poorly drafted and difficult to follow. It reads as though it is a combination of a cut-and-paste exercise and a dictation of the remainder without checking of the resulting decision. For example, the judge deals at length with article 3 when it was made clear at the outset of the hearing that article 3 was not relied on. Similarly, in consideration of article 8 the judge makes reference to family life when it is clear that the appellant had no family life and relied only on private life. Further, the order in which issues are addressed is peculiar with evidence and the self-direction on the law summarised at different points. Article 8 is addressed before paragraph 276ADE.

9. In arguing that had the judge considered the appellant's inability to travel to Pakistan the outcome of the appeal would have been different, the grounds are in the main a disagreement with the decision and an attempt to reargue the appeal. This was not a point pursued with any vigour by Mr Vokes, who stated that in essence the appeal to the Upper Tribunal was a reasons challenge, alleging irrationality. He went on to make a paragraph-by-paragraph critique of the decision, pointing to the peculiar layout of the decision and a number of apparent inconsistencies. For example, at [25] of the decision the judge suggested that article 8 was not engaged at all. However, the rest of the decision goes on to consider article 8. At [33] of the decision the judge was satisfied that the appellant had been in the UK lawfully for the "majority of time" but accepting at [37] the submission that he had always been here lawfully. Whilst these may be matters of valid concern, they are criticisms of form rather than substance. In VW (Sri Lanka) [2013] EWCA Civ 522 at [12], LJ McCombe stated, "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact." This is such a case. I am satisfied that read as a whole, one can discern the relevant findings and reasoning in what is essentially a simple case.

10. Contrary to the assertion in the grounds, the judge did give consideration to the inability to travel. At [44] the judge noted the competing arguments on this issue and at [45] that the medical opinion recommended no travel. The judge noted the

relatively minor level of effect on the appellant, that he experiences short night-time attacks which cause jerking of the left arm and leg, and which do not cause him to lose consciousness, and only occasional day-time attacks of a similar nature and duration. At [46] of the decision, whilst the judge accepted that epilepsy and its effects on the appellant are relevant to the issue of obstacles to integration in Pakistan on return, it was concluded that the alleged inability to return is not in itself a reason to grant leave to remain.

11. The grounds argue, as did Ms Patel at the First-tier Tribunal appeal hearing, that the inability to travel to Pakistan should have been considered as part of the appellant's circumstances in the article 8 consideration. When I questioned Mr Vokes on this particular aspect, he suggested only that the epilepsy, together with anxiety and depression, could amount to compelling compassionate or exceptional circumstances. However, the judge did consider that matter giving reasons for finding the circumstances not compelling or exceptional. Whilst all relevant matters are to be taken into account, if the appellant is not fit to travel at the present time, it does not necessarily follow that he should be permitted to remain in the UK. The ability to travel is a matter relevant to the mechanism of return; it is not a factor in his favour in the proportionality assessment outside the Rules or the basis on which he has an article 8 entitlement to remain on private life grounds. The judge rightly criticised the paucity of the evidence of fitness to travel, which comprised only one line in each of two brief reports in the medical evidence, with the consultant only 'recommending' that he should not travel.

12. In his submissions, Mr McVeety pointed out that the grounds do not challenge the judge's conclusion on paragraph 276ADE, finding no very significant obstacles to his integration in Pakistan. In the circumstances, it is difficult to see on what basis the appeal could succeed on article 8 grounds on the basis of an inability to travel. In the premises, I find no error of law in this aspect of the decision.

13. Contrary to the implied assertion in the grounds, the appellant is deserving of no particular credit for being able to speak English (s117B(2). However, the judge did take into account that the appellant's private life in the UK was developed at a time when he was lawfully present (s117B(4)), as he has always been lawfully present with leave as a student until 2019 and his leave is extended under s3C by his appeal. However, s117B(5) provides that little weight is to be accorded to a private life developed in the UK whilst his immigration status was precarious, as it always was. It follows that little weight should be accorded to the appellant's private life, though a reading of the decision reveals that the judge has fully taken the extent of his private life and lengthy lawful residence in the UK into account.

14. As Mr McVeety pointed out, very little evidence of the appellant's private life was put before the First-tier Tribunal. He lives in his own room in shared

accommodation but there are no statements from any friends or others in support of his application for leave to remain. Apart from length of residence and the fact of his studies in the UK, there was no evidence of any private life in the UK, no evidence of social or cultural integration or any involvement of any kind in the community. In the circumstances, it is difficult to see how the appeal could succeed on private life grounds.

15. In relation to s117B(3), Ms Patel argued at the First-tier Tribunal appeal hearing that use of the NHS by the appellant, which has been extensive given his various ailments, does not constitute the use of public funds. The judge accepted at [32] of the decision that the definition of public funds in paragraph 6 of the Rules does not expressly include use of the NHS. However, s117B relates to the wider public interest in the article 8 consideration outside the Rules. The judge was required to take into account in that article 8 assessment the public interest consideration that it is in the interests of the economic well-being of the UK that persons who seek to enter or remain in the UK are financially independent, because such persons are not a burden on the taxpayer and are better able to integrate into society. Mr Vokes accepted that even with an entitlement, the appellant's use of the NHS represents a drain on public funds. More significantly, the wording in s117B(3) does not include the phrase 'public funds' but addresses the issue of financial independence which avoids a burden falling on the taxpayer. Clearly, the appellant is not financially independent. Even though, as a student he was entitled to NHS treatment, having paid the NHS Surcharge, he is no longer a student and if he is permitted to remain in the UK outside the Rules on article 8 private life grounds, the cost of his continuing NHS treatment will necessarily amount to a burden on the taxpayer. In the premises, the judge was entirely correct to consider this matter a relevant consideration in the article 8 ECHR proportionality assessment. It is worth noting, however, that at the end of [32] the judge accepted that this consideration was not determinative of the appeal. In other words, it was but one factor to be considered in the proportionality balancing exercise. No error of law is disclosed in this regard.

16. Considering the decision as a whole, I am satisfied that the judge was entitled to conclude for the reasons set out in the decision that the appellant's circumstances were neither exceptional, nor compelling, nor sufficiently compassionate to justify granting leave to remain outside the Rules on the basis that otherwise the decision would be unjustifiably harsh. He could not meet the requirements of the Rules for leave to remain, which fact is highly relevant to the article 8 proportionality balancing exercise. At [52] the judge accepted that a 'broad evaluative judgement' was required and after providing cogent reasoning at [53] for why the requirement for very significant obstacles under paragraph 276ADE was not met, at [55] onwards of the decision, the judge set out the recommended balance-sheet approach of the 'pros' and 'cons' in assessing factors for and

against the appellant. It is clear that the judge took into account all relevant factors and made a careful and considered assessment.

17. In the circumstances and for the reasons set out above, despite the various concerns about the way in which the decision was drafted and issues addressed, I find no material error of law in the decision of the First-tier Tribunal. With minor medical conditions, no article 3 claim, no challenge to the finding that there are no very significant obstacles to integration in Pakistan, no family life, and only very limited evidence of any private life, there was no basis upon which a properly directed judge could have concluded that there were compelling circumstances sufficient, exceptionally, to justify granting leave to remain on the basis that the decision would otherwise be unjustifiably harsh. On its facts, the appeal based on private life was bound to fail.

Decision

The appellant's appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands, and the human rights appeal remains dismissed.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 1 December 2020