Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/17208/2019**

THE IMMIGRATION ACTS

Heard at Manchester CJC	**Decision & Reasons Promulgated**
On 17 August 2021	**On 04 October 2021**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

Dr ISHTIAQ AHMED
(Anonymity direction not made)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: In person.
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Dainty ('the Judge') who in a decision promulgated on 22 December 2020 dismissed the appellant's appeal against the Secretary State's refusal of his application for leave to remain in the United Kingdom on human rights grounds.

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2. The appellant, born on 10 November 1980, is a citizen of Pakistan. He has a dependant partner born on 19 February 1988, Miss Khalid, and they have a child who lives with them in the United Kingdom.

Background

3. Having had the benefit of considering the documentary and oral evidence the Judge sets out findings of fact from [30] of the decision under challenge.

4. The appellant had claimed he was eligible for leave under paragraph 276B of the Immigration Rules on the basis he arrived in the UK in January 2019 more than 10 years before his application for leave was made. The Judge noted, however, that the appellant became appeal rights exhausted on 26 October 2017. Since when his time in the United Kingdom has not been lawful. The Judge gave the appellant additional time after the hearing to file documents relating to a Court of Appeal application, but those showed that permission had been refused on 14 October 2017, supporting the Judge's finding that the appellant did not have the required 10 years continuous law residence required by the Rules. This is a finding within the range of those available to the Judge on the evidence.

5. The Judge records that the appellant's primary concern was his wife's illness and in particular her urticaria and depression. There is reference to the appellant's daughter having medical issues of her own, but the finding of the Judge is that a number of those matters had been resolved and that the required threshold of establishing article 3 suffering leading to a grant of leave on medical grounds had not been made out. This is a finding within the range of the evidence available to Judge at the hearing.

6. The Judge considers the position of the appellant's partner from [44] by reference to both the documentary and oral evidence. The Judge also notes at [52] that there is a dermatology clinic in Islamabad, and it was found there was no reason why the appellant and his family could not move closer to Islamabad or why arrangements could not be made to travel by car for treatment.

7. For the reasons set out between [44 – 53] the Judge concluded that the article 3 medical claims in relation to the appellant's wife and daughter must be dismissed.

8. The Judge went on to consider the question of insurmountable obstacles pursuant to paragraph 276ADE but for the reasons set out between [55 – 60] found no very significant obstacles to integration into Pakistan had been made out, and that the appellant and his wife could lead a normal fulfilling life in their home country.

9. The Judge also considered exceptional circumstances outside the Rules, including consideration of section 55 and the best interests of the child.

10. In relation to the proportionality of the decision, pursuant to article 8(2), the Judge writes at [68]:

68. Turning to proportionality on the one hand I take into account the length of time that the Appellant has been here, his private life and the associations he has made. On the other hand, I take into account my findings above that there is a clear basis for him to live normal fulfilling life in Pakistan. Crucially he is returning with his nuclear family into a support network of extended family. It is enshrined in IR 117B that the maintenance of effective immigration control is in the public interest. There is also a deterrence element to this since appellants should not be permitted to enter on a visit or study Visa and stay because they envisage a better life for themselves and their family. Unless, of course, there are some very powerful obstacles showing why they should not return, which I have found are not present here. It is certainly not sufficient, to argue as the Appellant did, that there are exceptional circumstances because the system in Pakistan is not similar to the NHS. I have dealt with the health issues above and it would be wrong to go behind my conclusions on art 3 and 276ADE by finding that the illnesses breach the article 8 rights to family and private life in some way unless there is some special exceptional factor in this case. There is not. This is a case of illnesses which do not reach the article 3 threshold, and in respect of which there is a functioning health system in the country of origin even if the NHS is preferable to that system. Weighing up all those factors I find that balance falls in favour of maintaining immigration control.

11. The appellant applied for permission to appeal, which was initially refused by a judge of the First-tier Tribunal but granted on a limited basis on a renewed application by a judge of the Upper Tribunal. The operative part of the grant being in the following terms:

2. The grounds assert that:

   a. Ground (1) – the FtT erred in refusing to consider evidence which post dated the hearing that predated the FtT's decision relating to the appellant's wife's medical treatment;
   b. Ground (2) – the FtT had erred in failing to consider the appellant's long residents of 12 years and his family's integration in the UK;
   c. Ground (3) – the FtT had cherry picked evidence regarding the family's ability to integrate into Pakistan, particularly in light of further evidence adduced after the hearing, including correspondence from the University of Lahore, requiring the appellant to return to work at the University as part of contractual obligations with them;
   d. Ground (4) - the respondent ought to withdraw a notice of liability for removal, issued in January 2017 on the basis that the appellant was pursuing an appeal to the Court of Appeal (permission was later refused).

3. Ground (2) discloses no arguable error of law. The FtT plainly considered at [35] whether the appellant has 10 years lawful residence (as opposed to merely presents with appeal rights exhausted) in the UK. The FtT considered the Court of Appeal's order refusing permission dated 14 October 2017. The FtT also considered in detail. The appellant's integration in the UK at [62-67], in the context of the precariousness of leave to remain. The FtT's findings were unarguably open to her to reach on the evidence before.

4. Ground (4) is not a challenge to the FtT's decision at all but instead a request that the respondent withdraw a notice of liability to removal in 2017. Permission on ground (4) is therefore refused.

5. In relation to grounds (1) and (3), whilst the appellant may not eventually succeed in his appeal, it is at least arguable that the FtT's refusal to consider evidence in relation to the appellant's wife's medical condition,

(correspondence dated 3 December 2020, which refers her condition severely affecting the quality of her life) was an error of law (ground (1). While the substance of the ground may ultimately prove to be weak, on the basis that treatment may be available in Pakistan, the ground is at least arguable.

6. The arguable error in relation to ground (1) also then arguably impacted on the FtT's consideration of obstacles to the appellant's family's ability to integrate into Pakistan (ground (3). While the appellant's challenge to the FtT's findings on his ability to find work or study in Pakistan, and have the benefit of family support in Pakistan, appear to be weak, I do not refuse permission in respect of them and I grant permission in respect of ground (3) on the basis that the medical issues may arguably have an impact on the FtT's wider analysis of obstacles to integration.

7. Permission is therefore granted only in respect of grounds (1) and (3). Permission is refused, in respect of grounds (2) and (4).

Error of law

12. The chronology shows that the appeal was heard on 8 December 2020 and the decision promulgated on 22 December 2020.

13. Directions had been given in the course of the appeal for any documentary evidence upon which the appellant was seeking to reply to be filed by a specified date prior to the hearing, which also included the following direction:

"No additional witnesses, documentation; or other evidence may be called or relied upon by either party without the leave of the tribunal unless full details, together with witness statements and copies of the documentation or other evidence to be relied upon is filed and served no later than 5 clear days prior to the substantive hearing."

14. These directions do not prevent an individual providing all the evidence they seek to rely upon but set out a framework enabling such evidence to be provided to the opposing party and to the decision-maker prior to the hearing to ensure it is available for consideration at that time. Natural justice dictates such an approach to prevent "ambush" or a denial of a fair trial.

15. The Judge's record of proceedings shows that as part of the introduction the Judge checked with the parties whether she had all the documents. The Judge specifically records following exchange with the appellant:

-further medical evidence? – say on WS that report from Dr and going to post? What did you expect it to say? What efforts made to obtain it

Still don't have it - we are waiting for that before filing evidence.

16. The Judge sets out a summary of the events at the hearing from [18] in which reference is made to the evidence that was available. Between [24 – 29] the Judge writes:

24. I pause to note that during closing arguments the Appellant talked on a number of occasions of forwarding further documents to the Tribunal for

consideration. I explained to the Appellant that the time had passed for submitting his evidence as that should have been before (in the case of documents) and during (in the case of oral testimony) the hearing. The reasons were that this would not be fair to the Respondent as she would have no opportunity to cross examine on any documents sent after the hearing. Furthermore, there were clear directions and sufficient time for submitting documents. I note that, given the Appellant was representing himself, and I noticed that no Appellant's bundle had been submitted, I had caused an email to be sent on the day before the hearing by the Tribunal's clerk to the Appellant stating that any evidence that was to be served must (for reasons pertaining to Covid-19 transmission) to be sent by email. Any documents could at the latest have been sent that evening by email. Finally, the Appellant had been before the tribunal and the Upper Tribunal before and so can be taken to understand that if he could not proceed without a document, he could have asked me for an adjournment, and he had not.

25. I made one exception to this. The Appellant stated that he had appealed the previous appeal to the Court of Appeal and wanted to provide evidence of this to me. I allowed any order from the Court of Appeal refusing permission to appeal to be served and lodged by 12 noon on the day after the hearing. I then gave a further 1.5 days to the Respondent to respond by email. I allowed this because a Court of Appeal order is short, clearly recognisable document and would either support or not support the Appellant's assertion that it became appeal rights, exhausted in January 2019 and not 2017, as alleged by the Respondent. Miss Kayani had no objection to this on behalf of the Respondent.

26. On 9/12/20 at 22:00 the Tribunal received an email. Included in the attachments were a short second witness statement and a letter from the University of Lahore. The Respondent by email of 10/12/22 to the Tribunal objected to those documents being adduced into evidence as no permission had been granted for this - the only permission was for the Court of Appeal order. I agreed that they should not be considered for the reasons stated above.

27. Also attached to the 9/12/20 22.00 email referred to above were orders of the Court of Appeal and Upper Tribunal dated 14/10/17 and 21/11/16 respectively. The latter was already before this Tribunal save for some immaterial covering letters from the Tribunal Office. The former I admitted and have considered below.

28. I was also forwarded to further documents, appearing from the names of the attachments on 15/12/20 from the Tribunal Office emailed from the appellant. I did not consider those for the same reasons as stated above at paragraph 24. I requested that the Tribunal office emailed the Appellant to state that I would not be opening the attachments as I have not given permission for anything other than the Court of Appeal orders to be filed. It will be open to the Appellant to make further submissions on those directly to the Respondent outside of this appeal if he wishes to do so.

29. All of the documentary and oral evidence and argument has been taken into consideration by me and (insofar as oral) is fully set out in the Record of Proceedings and referred to in this decision insofar as it is relevant. At the conclusion of the hearing, I reserved my decision which I now give with reasons.

17. Despite the appellant being aware of the specific terms of the direction relating to the limited nature of the post-hearing evidence that the Judge was willing to admit, and despite the Judges refusal to

consider evidence not falling within the same, there was no application by the appellant for relief from the sanction restricting the post-hearing evidence and no specific application made to ask the Judge to reopen the hearing to enable the additional evidence to be considered.

18. It must remember that not only has the appellant had previous experience of hearings before the First-tier and Upper Tribunals but both he and his partner are very intelligent individuals. This is not a case in which it was made out there is any likely misunderstanding in what was expected or what was permitted.

19. Within Ground 1 the appellant acknowledges having received the Notice of Hearing and the directions requiring him to file further evidence. The appellant claims that an appointment was made in relation to his partner's medical condition and on 1 December 2020 a request was made for her specialist doctor to prepare a letter describing her latest condition, which could be presented to the First-tier Tribunal. That letter, which refers to a clinic visit of 2 December 2020 and being typed on 3 December 2020 is addressed to the appellant's partner's GP and is in the following terms:

> Re Sahar Khalid d.o.b 19/02.1988
> [address]
>
> Clinical problems:
> Urticaria and angioedema
>
> I reviewed this lady in a face-to-face consultation at Trafford General Hospital. Unfortunately, her symptoms of urticaria and angioedema are not settling down even with being on the maximum dose of antihistamine which is taking Fexofenadine 180 mg 4 times a day and also Montelukast. She has frequent episodes of swelling of the lips and also her cheeks and chin along with urticaria on the rest of her body. The episodes of urticaria are occurring daily although they are slightly less frequent. She has had this problem for a number of years and she is very upset and limited with this problem. It is affecting severely her quality-of-life. She has shown me again the photographs of her angioedema episodes involving her lips and around the eyes. Luckily she has an appointment on 13 December in a specialist urticaria and angioedema clinic. Considering she is already on the maximum second-line treatment. I suspect she will require 3rd line treatment which may include immunosuppressive treatment or biological treatment.
>
> I would appreciate if you would keep supplying the fexofenadine, which is the higher dose than recommended in the BNF. She will also need to continue the Montelukast. Considering her long history. I think that she is at the end of her tether, and I am hopeful that wants. She has been seen in Salford shall be offered third line treatment.
>
> Yours sincerely
>
> Dr Tariq Razzaq
> Trafford Dermatology Department

20. There is attached to the grounds of appeal confirmation of an appointment with the Renal Outpatients Department, Salford Royal NHS Foundation Trust Hospital, on 14 January 2021 for Miss Khalid.

21. It is not the case of the Judge having no evidence at all in relation to the appellant's medical condition as the Judge had within the bundle a letter from Manchester University NHS Trust typed on 25 July 2019 relating to the appellant's partner in the following terms:

> To whom it may concern
> …
>
> I have been requested to provide a letter to the Home Office for Sahar Khalid. She has been under our Dermatological care at Manchester University NHS Hospital Trust since 2016. She has a condition called chronic spontaneous urticaria which can cause severe itching, swelling is of the skin, sometimes mucosa areas. Heat tends to aggravate this condition and warm places are generally not encouraged as the warm weather can potentially worsen her condition.
>
> She was treated initially with oral antihistamines. She had a period of relief when she was pregnant, but her symptoms seem to have returned and worsened in March 2019. This was when she was last reviewed by us. We were planning to start her on a systemic immunosuppressant to control this condition better. We have arranged for some baseline investigations before she could start on the medication. In terms of prognosis, about 11% of patients with urticaria continue to suffer from this condition after 5 years. If we were to start her on an oral immunosuppressant, she will require regular blood tests, after 2 weeks of starting, monthly, then 3 monthly until she is stable on the medication. Ideally, she needs regular blood monitoring in the first few months of starting the medication until she is stable on the medication. We are unable to tell whether she will respond fully to this medication until we have started her on this.
>
> …
>
> Dr N Chiang
> Consultant Dermatologist.

22. It Judge also had the benefit of the witness statements and the oral evidence. The letter from Dr Chiang appears at [45] of the determination in full. At [44] the Judge refers to having been provided with the appointment letter for the appointment on 1 December 2020 and the forthcoming appointment on 11 December 2020. In that paragraph. The Judge writes:*" I also heard from Ms Khalid about how her urticaria manifests itself and affects her life. She told me that it comes several times per month. It causes her to itch uncontrollably. She cannot sleep with it. She is on regular medication - Fexofenadine and montelukast. It has caused her breathing difficulties and she sometimes has to go to hospital. She does however keep steroids at home which can be used if it gets particularly bad and breathing difficulties occur. She has noticed the heat exasperates her condition. In terms of the historical evidence there is a GP record from 2018 that evidences medication, fact of needing an admission to A and E and consultation frequency of 4 – 6 months with a specialist. There are also other appointment letters, the latest being January 2019 at the Pharmacy Led Respiratory Clinic within the Dermatology department at Withington.*

23. The Judge concludes that the appellant had not shown substantial grounds for believing that Ms Khalid would (a) rapidly (b) experience

intense suffering (to the article, 3 standard, so akin to torture/inhuman or degrading treatment) (c) because of her illness and (d) because the nonavailability of treatment if returned to Pakistan. The Judge in so finding was applying the guidance of the Supreme Court in AM (Zimbabwe) [2020] UKSC 17.

24. There is no absolute prohibition on post-hearing evidence if the interest of justice requires the same to be admitted to ensure a proper outcome. A person seeking to adduce such evidence, however, must be aware of the principles in Ladd v Marshall [1954] EWCA Civ 1, which are applicable if late evidence is to be adduced. These were discussed with Dr Ahmed at the hearing before the Upper Tribunal. Those principles are:

a) The evidence could not have been obtained with reasonable diligence for use at trial;

b) The evidence must be such, if given, it would probably have an important influence on the result of the case, though it need not be decisive; and

c) The evidence must be such as is presumably to be believed, it must be apparently credible, though it need not be incontrovertible.

25. No issue arises with regard to the ability of the appellant to have obtained a letter from the Trafford Dermatology Department any sooner in light of the date when it was typed and would have been posted to and received by the GP and Miss Khalid.

26. No issue was raised by Mr Tan in relation to the information from the Trafford Dermatology Department about whether it could be believed. The contents of the letter were not challenged as lacking credibility.

27. The difficulty for the appellant relates to the second of the principles, whether that if such evidence had been given it would probably have an important influence on the results of the case.

28. The Judge clearly considered the merits of the appeal by reference to all the available evidence, which included detailed oral evidence regarding Miss Khalid's medical condition. The Judge found the witnesses generally credible and taking their case at its highest was not satisfied that the AM (Zimbabwe) test was met. The letters that the appellant seeks to rely upon as post-hearing evidence do not change this assessment. Whilst there is great sympathy for Miss Khalid whose suffering must at times feel intolerable, it is only in the cases in which the required threshold can be shown to be breached that article 3 provides a means of resisting removal. This is not one of those cases.

29. The Judge also found the availability of a dermatologist in Islamabad. It is not made out in the post-hearing evidence established that the appellant would not be able to access appropriate medical treatment in Pakistan to deal with her complaints, as found by the Judge.

30. The claim the Judge "cherry picked" evidence regarding the family's ability to integrate into Pakistan is without merit. The Judge was not required to set out all the evidence provided and make findings upon the same. It is clear the Judge considered the evidence with the required degree of anxious scrutiny and that the findings made are adequately reasoned as to why the appellant and his family will be able to continue to live in their home country in a normal manner.

31. There is no legal error made out in the Judge's findings regarding the availability of family support in Pakistan.

32. In relation to the appellant's claim regarding prospects of employment, specific weight is placed by him upon a letter from the University of Engineering and Technology, Lahore, dated 28 July 2015, which the appellant claims will hinder his prospects of employment. That letters in the following terms:

> University of Engineering and Technology, Lahore
>
> Mr Ishiaq Ahmed
> Lecturer, Mechanical Engineering Department, UET, Lahore.
>
> …
>
> PhD Scholar
> School of Mechanical Aerospace and Civil Engineering,
> The University of Manchester, George Begg Building
> Sackville Street
> Manchester
>
> Subject: **ABSENCE FROM DUTIES**
>
> You availed Ex-Pakistan Leave w.e.f 04.11.2009 to pursue your PhD under Faculty Development Programme. You are granted extension on leave from time to time up to 03.11.2014. After that, you neither applied for further extension on leave, nor have joined the University whereas you should have completed your PhD till now. You were already asked vide letter/emails to join the University and fulfil the obligations of your agreement with the University. However, we have not received any positive response from you and that has been taken very seriously.
>
> The Higher Education Commission has also advised the University to take strict disciplinary action against the PhD Scholars who have failed to join back after the completion of their PhD degree programme.
>
> You are directed to report and join your duties as part of terms & conditions of Agreement. You are advised to inform the University about the date of your joining. University is looking forward for your joining. In case of failure, University will take disciplinary action under PEEDA Act -2006, which may lead to charges of misconduct, fraud and corruption as per decision of the Syndicate. Your guarantor Mr Mukhtar Ahmed Naz […] Is also contacted for necessary compliance and fulfilment of terms and conditions of agreement.

33. The test being applied by the Judge was not whether the appellant will be able to return to his work at the University of Lahore but whether the appellant had established insurmountable obstacles when taking everything into account holistically. At [58] the Judge writes:

> 58. I agree with the Respondent that the Appellant is highly skilled and so ought to be able to find work. He has a PhD in aerospace engineering. His evidence at the 2015 appeal hearing attested to how bright he was and his academic accolades. He now argues that he could not work for a university in Pakistan because he left a role in a university employed by the government to study in the United Kingdom and never returned even though he was required to for his old job. He argues that by reason of that he would not be able to work in a university again. I find that to be rather a sweeping statement that lacks plausibility because, as Miss Kayani argued he would be returning with the benefit of the further skill and expertise obtain during his doctoral study in the UK. The reference relied upon for the 2015 hearing attested to him being diligent and in the top 5% of students. There is no evidence before me at all that once a relationship with one university is tainted that prevents association with any university, save for the Appellant's assertion. Since that suggestion is somewhat surprising. I would have required some external evidence of such a practice. There is further no evidence before me that there wouldn't be fulfilling job opportunities outside the universities.

34. The appellant has failed to provide any additional evidence to show that the Judge's finding is not one available to her on the evidence.

35. I do not find that the appellant's argument and the evidence that he claims the Judge should have considered, including medical evidence, undermine any of the findings by the Judge in relation to article 3 (medical) test, article 8 ECHR, or findings pursuant to paragraph 276 ADE of the Immigration Rules.

36. Whilst the appellant disagrees with the Judge's findings, based upon a clear desire to be permitted to remain in the United Kingdom, the grounds fail to establish legal error material to the decision to dismiss the appeal sufficient to warrant the Upper Tribunal interfering any further in this matter.

Decision

37. There is no material error of law in the Judge Dainty's decision. The determination shall stand.

Anonymity.

38. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated 23 August 2021