IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001814

First-tier Tribunal No: HU/08391/2020

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 22 February 2022

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

Sohail Ali Ashrif
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms S Iqbal of Counsel, instructed on Direct Access
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 24 January 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India born on 13th July 1985. He arrived in the United Kingdom in September 2007 with entry clearance as a Tier 4 (General) Student Migrant. He extended his leave in this capacity until July 2012 and then had a period of statutory leave by virtue of section 3C of the Immigration Act 1971 until March 2014. Since the expiration of his statutory leave, the appellant has continued to make applications to the respondent but was an overstayer. He was served with a letter

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dated 10th June 2015 by the respondent which erroneously stated that he continued to have section 3C statutory leave. This mistake became clear in decisions of the First-tier Tribunal in 2016 and in a judicial review in the Upper Tribunal in 2017. Amongst the applications made after the expiry of the appellant's leave were a human rights application made on 19th November 2018 and a long residence application made on 18th January 2019, both of which were refused. On 25th February 2020 the appellant made a human rights application based on his private life, which was refused on 23rd July 2020. His appeal against this decision was heard by First-tier Tribunal Judge Elliott, sitting in Birmingham, and dismissed in a Decision and Reasons promulgated on 24th November 2021.

2. Permission to appeal was granted by Upper Tribunal Judge Gleeson on 30th August 2022 on the basis that it was arguable that the First-tier Tribunal had erred in law in, firstly, failing to give anxious scrutiny to the expert evidence by referring to the expert by the wrong name and saying that the expert said the appellant is not a Muslim, when clearly he said that the appellant was a Muslim. Secondly, it was found to be arguable that the First-tier Tribunal took into account irrelevant considerations and failed to consider the respondent's policy guidance; failed properly to apply the decision of the Court of Appeal in CI (Nigeria) v Secretary of State for the Home Department [2019] EWCA Civ 2027 and, in particular, its guidance on the application of the test in Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813; and, failed to consider whether there were exceptional circumstances for the grant of leave to remain outside the Immigration Rules.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law and, if so, whether any error was material and whether the decision should be set aside and remade.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Ms Iqbal for the appellant, it was contended, in summary, as follows.

5. Firstly, it was contended that the First-tier Tribunal failed to give the expert evidence anxious scrutiny. The expert evidence was from Dr Chris Smith, who is correctly identified at [73] of the decision but thereafter the First-tier Tribunal refers to the expert as "Dr Evans". The decision records at [74] that the expert report incorrectly states that the appellant is not a Muslim when in fact the report confirms that he is a Muslim.

6. Secondly, it was contended that the First-tier Tribunal failed to examine properly the claim the appellant brought that he would face very significant obstacles to integration on return to Indian Kashmir by reference to the respondent's guidance and the test in Kamara and CI

(Nigeria) and instead brought in irrelevant considerations of his not claiming persecution and of the conditions in Kashmir applying to everyone. The finding that the appellant could relocate elsewhere in India away from the problems is also insufficiently reasoned.

7. Thirdly, it was contended that there was a failure to consider the exceptional circumstances of this case including the immigration history in the United Kingdom, the erroneous section 3C letter of 10th June 2015 and the impact of this on the appellant's mental health, which was supported by psychiatric evidence. Further, there is a reference in the decision at [124] to "insurmountable obstacles", which is the wrong test.

8. Ms Iqbal expanded on her written grounds at the hearing. She placed particular reliance on her second and third grounds, namely, the failure to consider the respondent's guidance, which she said was set out in counsel's skeleton argument provided to the First-tier Tribunal. The guidance instructs caseworkers to have regard to country information when assessing whether there are very significant obstacles to integration, including "*where rights and freedoms would otherwise be so severely restricted as to affect their fundamental rights, and therefore their ability to establish a private life in that country*". She argued the First-tier Tribunal had failed to have regard to the significant changes in country conditions since the appellant left 14 years ago which would affect his ability to reintegrate.

9. Ms Iqbal acknowledged that the test of very significant obstacles, as explained in Kamara and CI (Nigeria), sets a high threshold. However, the situation in the appellant's home area had changed drastically for Muslims. His ability to adapt would be impacted by the length of time he has resided in the United Kingdom free of any restrictions. We asked Ms Iqbal to clarify the basis upon which she relied on CI (Nigeria) and how it might be seen as refining the test set out in Kamara. She confirmed that the Court of Appeal found the Upper Tribunal had erred in making its assessment of very significant obstacles because it failed to take account of the appellant's likely psychiatric condition if he were deported.

10. Having heard Ms Iqbal's submissions and considered the grounds of appeal, we indicated to Ms Everett that we would not need to hear from her. We were satisfied the decision of the First-tier Tribunal does not contain a material error of law and that the appellant's appeal should be dismissed. Our reasons are as follows.

Conclusions – Error of Law

11. We have reminded ourselves that, in Parveen v Secretary of State for the Home Department [2018] EWCA Civ 932, the Court of Appeal confirmed that the very significant obstacles rule presented an elevated threshold which would not be met by mere inconvenience or upheaval.

The task of the tribunal was to identify the obstacles to reintegration relied on and to decide whether they can be regarded as very significant. Having read the decision of the first-tier Tribunal we are amply satisfied that this task has been accomplished.

12. Ms Iqbal did not press us on the point about the First-tier Tribunal's error in referring to Dr Evans and the slip as to the appellant's religion. It is abundantly clear from reading the decision as a whole that the judge had in mind the correct report and that he understood the appellant's case, including his religion.

13. At [72] to [73] of the decision, the judge accepted that Dr Smith was an expert and therefore he could give weight to his report. As the grounds correctly point out, the decision refers to the expert as Dr Evans from [75] onwards. We find that the mistake over the expert's name, whilst regrettable, does not disclose any material error because it is wholly apparent that the judge understood and gave weight to the contents of the report.

14. Likewise, the error at [74], where the decision wrongly states that Dr Smith says that the appellant is not a Muslim, is clearly an error of no real consequence. The judge explicitly states that the appellant is Muslim at [39] and, when analysing the expert report, considers what Dr Smith has to say about nationalistic Hinduism and anti-Muslim violence at [75] and [76]. He notes that India is home to 200 million Muslims, according to Dr Smith. The error at [74] is immaterial.

15. As for the challenge to the adequacy of the First-tier Tribunal's consideration of the very significant obstacles test, we consider that the judge's overall conclusion on the matter is sustainable. We consider that the First-tier Tribunal decision contains a detailed and thorough analysis of all the factors relevant to the test.

16. In particular, the findings set out at [66] concerning the appellant having spent the first 22 years of his life in India, his being educated to degree level there, the existence of family in India and his ability to speak the local language were all findings the First-tier Tribunal was entitled to make on the evidence. The findings at [70] that the appellant would now be able to contact his family in India and, if he returned, would be able to keep in contact with those in the United Kingdom were properly made. We find that the finding made at [90] that the appellant could turn to his family for accommodation and support was also therefore properly open to the First-tier Tribunal. Further, the finding at [77] that he would be able to obtain an Aadhaar ID card, which he would need in order to access services in Kashmir is also sufficiently reasoned.

17. Dealing with the issues raised by Ms Iqbal in her oral submissions, we note that, at [75] of the decision, the First-tier Tribunal accepts that there is hostility and discrimination against Muslims, but not that this has morphed into persecution, as set out at [81]. We consider this

finding is properly based on Dr Smith's report and the other country of origin materials. The discussion at [82] and [83] leads to the conclusion at [89] that that Muslims are in an economically and educationally weaker position than Hindus in India. We find it was open to the First-tier Tribunal to find, at [91], in the context of investment in the region, that the appellant would have some job prospects and family help in obtaining employment. We do not consider that the finding at [92] and [93], that the appellant could relocate elsewhere in India, is insufficiently reasoned. The CPIN is referenced in support of the judge's factual findings. The appellant's medications for his mild anxiety, insomnia and depression are found to be available in India with reference to the CPIN at [96] of the decision. It is also found at [97] that, whilst there may be prejudice against the mentally unwell, the appellant is functioning sufficiently well for this not to be a problem for him.

18. The test in Kamara is properly paraphrased at [99] of the decision. At [100] to [107] consideration is then given to whether the findings which are re-summarised above meet the test. We find no error of law in this section. We find no merit in the argument that the judge failed to apply the correct test by reference to CI (Nigeria). It is plain that he factored in the appellant's mental health at [106].

19. The First-tier Tribunal's decision contains a general Article 8 proportionality balancing exercise with a legally correct self-direction at [108] and [109] of the decision and proceeds to set out a structured assessment of the competing factors in play. This includes consideration of the appellant's period of lawful stay, the erroneous letter which stated he had section 3C leave given to him in 2015 and his private life ties, balanced against the public interest in his removal. The reference to "insurmountable obstacles" at [124] is an error but not, we find, material to the outcome of the appeal. It is tolerably clear that the judge intended to refer to the findings he had already made on the very significant obstacles test. The judge rightly noted at [110] the considerable weight to be given to the public interest. Detailed consideration is given to the appellant's immigration history and it is clear his statutory leave expired in March 2014. Little weight could therefore be given to private life established after that date by virtue of section 117B(4) of the Nationality, Immigration and Asylum Act 2002.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and is maintained.

2. The appellant's appeal is dismissed.

Signed:

Deputy Upper Tribunal Judge Froom

25th January 2023