IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001951
First-tier Tribunal No:
HU/51287/2021
IA/04344/2021

THE IMMIGRATION ACTS

Heard at Manchester CJC
On the 22 November 2022

Decision & Reasons Promulgated
On the 08 February 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

AHSAN SALEEM AHMAD
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr B Malik, instructed by Farani Taylor Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan, born on 26 July 1987. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights claim.

Background

2. The appellant first entered the UK on 12 April 2011 as a Tier 4 student migrant, with leave to enter valid until 4 August 2012. On 31 July 2012 he applied for further leave as a Tier 4 student migrant and he was granted leave until 23 November 2013.

3. On 2 August 2013 the appellant married the sponsor, Ambreen Kausar, who was a national of Pakistan settled in the UK and who had come to the UK in 1998 as the spouse of a British citizen, had divorced her husband and was subsequently naturalised as a British citizen.

4. On 10 October 2013 the appellant applied for leave to remain as a spouse and was granted leave until 11 May 2016. His subsequent application for leave to remain as a spouse was, however, refused on 31 May 2016 under the suitability provisions in Appendix FM. That was due to his reliance upon a fraudulently obtained TOEIC English language certificate, in his application for leave made on 31 July 2012, which was deemed invalid by ETS.

5. The appellant's appeal against the refusal of his application was heard by First-tier Tribunal Judge Cox on 7 April 2017 and was dismissed in a decision promulgated on 26 April 2017. It was accepted that the appellant' relationship with his wife was genuine and subsisting and that they intended to live together permanently as husband and wife and, as such, the judge accepted that the appellant had established a family life in the UK. However, having considered the respondent's allegation of deception in relation to the TOEIC certificate and having heard from the appellant and his wife, Judge Cox did not find the appellant's explanation to be a credible one and concluded that the TOEIC certificate had been procured fraudulently. He concluded that the respondent had properly applied the suitability provisions in S-LTR.1.6 of Appendix FM, that the appellant could not meet the requirements of the immigration rules and that any interference with his and his wife's family life was necessary and proportionate. He accordingly dismissed the appeal on Article 8 human rights grounds.

6. The appellant was refused permission to appeal to the Upper Tribunal and became appeal rights exhausted on 25 January 2018. He was served with removal papers on 2 December 2019.

7. On 27 December 2019, the appellant made a human rights claim in a further application for leave to remain under Appendix FM of the immigration rules on the basis of his family life with his wife. Further representations were submitted on 3 February 2021 in support of the application enclosing a psychological report from Dr Desiree Saddik, a consultant lead child adolescent and family chartered clinical psychologist, in relation to the sponsor's mental health. Reference was made to the sponsor's previous marriage which ended in divorce on 18 October 2007 and which, it was claimed, was extremely traumatic and involved frequent abuse. It was submitted that the sponsor was in fear of returning to Pakistan because of threats from her ex-husband and his family and that, as confirmed in Dr Saddik's report, she had developed serious

mental illnesses as a result of the years of abuse suffered and was currently suffering from depression, panic disorder and significant post-traumatic stress disorder symptoms. She had been working as a care assistant since December 2014 and had to work despite her mental health issues because the appellant was not permitted to work. It was submitted that the appellant provided emotional support to the sponsor and prevented her from committing suicide. It was submitted that the appellant had established a family and private life in the UK and that he and his wife were hoping to have fertility treatment as they had been unable to conceive. They would have no connections in Pakistan and would not be able to maintain themselves there. It was said that the appellant had friend and parents in Pakistan but they could not support him. It was submitted that the appellant maintained that the allegations of fraud in relation to his TOEIC certificate were untrue and it was asserted that his removal to Pakistan would breach his Article 8 rights.

8. The appellant's application was refused on 6 April 2021 and it is that refusal decision which has given rise to this appeal. In that decision, the respondent considered, as previously, that the appellant's application fell for refusal on suitability grounds and relied upon paragraph S-LTR.4.2 of Appendix FM on the basis of the appellant's reliance upon a fraudulently obtained a TOEIC certificate in July 2012. The respondent considered that the appellant did not meet the eligibility immigration status requirements in Appendix FM and that EX.1 did not apply, that the requirements of paragraph 276ADE(1) of the immigration rules were not met and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules.

First-tier Tribunal

9. The appellant appealed against that decision. His appeal was heard on 18 March 2022 by First-tier Tribunal Judge Alis and was dismissed in a decision promulgated on 28 March 2022. Judge Alis heard from the appellant and his wife and had witness statements from both. He also had before him two psychiatric reports relating to the appellant's wife, the first was the report from Dr Saddik dated 5 August 2020 and the second, dated 14 March 2022, was from Dr Mohan Chawla, consultant psychiatrist. Both reports had been requisitioned by the appellant's solicitors.

10. Judge Alis accepted that the appellant and his wife were in a genuine relationship. He noted that the sponsor was in gainful employment in the UK within the care industry and that she took Sertraline for depression. The judge was satisfied that any problems the sponsor had with her former husband were no longer a factor as she had had no contact with him since they divorced. The judge noted that, whilst much weight was placed on the sponsor's mental health, that had not been raised before the Tribunal in the appeal in 2017 and it was relevant that she had worked consistently as a care worker without taking time off since the start of the pandemic in March 2020 and had demonstrated that she was more than capable of going to work and providing financially for herself and the appellant. The judge considered that the sponsor's condition was not as bad as either she or the two medical experts had made out, that medication and medical treatment would be available to her in Pakistan and

that she would be able to secure employment there. The judge noted that the appellant had spent the majority of his life in Pakistan. He rejected the sponsor's claim that she had no contact with her mother, noting that she had gone to see her in Pakistan in 2019 when she was ill, and did not accept her claim that she had spoken to her mother only once since then. He found that both the appellant and his wife had family in Pakistan to whom they could turn for support. The judge considered the factors in section 117B(4) of the Nationality, Immigration and Asylum Act 2002. Whilst he accepted that the appellant may not succeed in an application for entry clearance if he were return to Pakistan alone and seek re-entry, he found that the positive factors in support of allowing the appeal did not outweigh the importance of maintaining immigration control. He concluded that there were no exceptional circumstances that made refusal of the appeal a breach of Article 8 and he accordingly dismissed the appeal.

11. The appellant sought permission to appeal to the Upper Tribunal on two grounds: firstly, that the judge's approach to and assessment of the medical expert evidence was inadequate; and secondly, that the judge failed adequately to explain why the evidence about family contact and support in Pakistan was not credible.

12. Permission was granted in the First-tier Tribunal on 12 May 2022.

Hearing and Submissions

13. The matter came before us for a hearing and both parties made submissions.

14. For the first ground, Mr Malik referred the Tribunal to the oral evidence about the sponsor's mental health problems and to the two medical reports, from Dr Saddik and Dr Chawla, both of which gave detailed opinions on the sponsor's mental health and the impact on her mental health of separation from the appellant. He submitted that the judge had erred in law in his analysis of the reports. Both experts set out their qualifications and explained the methodology they followed, and there had been no challenge by the respondent to their expertise, yet the judge gave no weight to the reports. The fact that the sponsor's mental health was not raised at the previous tribunal hearing in 2017 and that the sponsor had continued to work as a carer, as mentioned by the judge at [35] and [36], was not a proper reason to undermine the medical evidence. Both experts were fully aware that the sponsor was working when they gave their opinions on her mental health. The judge's finding at [37], that the appellant's wife's condition was not as bad as the medical experts had made out, was concerning. The judge was not entitled to find that the experts had elevated the severity of the sponsor's condition. Mr Malik accepted that it could have been open to the judge to find that the sponsor had embellished her account to the experts, but it was not open to him to find that the experts had exaggerated the case. Something more was required of the judge by way of reasons if he was to say that the reports were unreliable.

15. As for the second ground, Mr Malik submitted that the judge erred by conflating the matters of contact, and realistic support, from family members. The appellant's evidence in his statement was that, whilst he was in contact with his family in Pakistan, they were not able to provide him with support. His wife, in her statement, said that her family did not support her. That was material, since the question of a lack of support formed part of Dr Chawla's opinion as to the impact on the sponsor's mental health if she returned to Pakistan.

16. Mr McVeety submitted that the judge was entitled to reject the appellant's claim to have no contact with her mother, in light of her evidence that she had visited her in Pakistan in 2019, and that the written grounds misrepresented that visit by saying it was only a matter of filial duty. Further, the grounds failed to explain what support was required by the appellant and his wife in Pakistan, when the only support they relied upon in the UK was from each other. It was open to the judge to find that there was support available. The expert report was deficient in so far as it relied on a need for family support in Pakistan and the fact that there was an absence of such support. With regard to the expert reports, Mr McVeety relied on the case of HA (expert evidence, mental health) Sri Lanka [2022] UKUT 111 and the fact that the experts did not consider that the sponsor may have fabricated her account and that neither expert had been provided with any GP records. It was relevant that the GP had never referred the sponsor to a psychiatrist, despite the claims that she had attempted suicide. There were contradictions in the reports as to how many suicide attempts there had been. Mr McVeety submitted that Dr Saddik had simply accepted what the sponsor told her and gave by way of an example the sponsor's claim that she had been informed by the Home Office that she and her husband would have to have a child in order for him to be granted permanent leave to remain in the UK, which was ridiculous. Mr McVeety submitted that the judge was simply saying that the expert reports were over-egged and the experts were only dealing with what the sponsor had told them. On that basis he was entitled to go behind the reports and he gave adequate reasons for doing so.

17. Mr Malik, in response, submitted that Mr McVeety's submissions were simply back-filling and were providing reasons which the judge had not given himself. That was suitable for a reconsideration of the case but not in identifying an error of law in the judge's decision.

Discussion

18. Mr Malik's first ground was a challenge to the judge's approach to the medical evidence, in particular to his finding at [37] that the appellant's wife's condition was not as bad Dr Saddik or Dr Chawla had made out. He submitted that the judge was not entitled to find that the two medical experts had elevated the severity of the sponsor's condition and it was asserted that the judge had substituted his own non-expert opinion for that of two qualified experts.

19. However the judge was not doubting the expertise of the doctors, but rather his finding at [37], which we accept could perhaps have been better expressed, was that the sponsor had exaggerated her condition to the doctors. The experts did not have any GP records before them for the sponsor and, whilst Dr Chawla referred to the sponsor's hospital records, those related to her gynaecological and fertility issues. The experts had accordingly based their opinions solely on the sponsor's own account, accepting what she told them without more, and it was on that basis that the judge gave limited weight to their reports, as consistent with the guidance in HA (expert evidence, mental health) Sri Lanka [2022] UKUT 111.

20. As the judge noted at [35] and [36], the sponsor's mental health had not been raised as an issue in the appellant's previous appeal in 2017 and the sponsor had managed to continue working throughout the pandemic without any time off despite claiming to have been badly affected by mental health issues arising from the breakdown of her previous marriage. It was for those reasons that the judge considered that the sponsor had exaggerated the extent of her mental health problems to the doctors. He was perfectly entitled to conclude as such. As Mr McVeety pointed out, there were further matters affecting the weight to be given to the expert reports including the fact that they were based upon inconsistent accounts from the sponsor of her claimed suicide attempts (she reported to Dr Saddik about one suicide attempt but to Dr Chawla about multiple attempts), none of which were supported by any evidence from her GP, and that Dr Saddik had simply accepted the sponsor's clearly misguided account of having received advice from the Home Office that her husband's visa was dependent upon them having a child. Further, the experts had simply accepted the sponsor's account of the impact on her return to Pakistan based upon a lack of support in that country but had failed to consider what support aside from the appellant she required in any event. Although those were not matters specifically referred to by the judge, we agree with Mr McVeety that they lend further support to the limited weight the judge was able to give to the expert reports.

21. Accordingly, we find no merit in the first ground, which is essentially a challenge to the weight the judge accorded to the expert evidence. The judge fully engaged with the expert evidence. His approach to the experts' reports was entirely appropriate and lawful. The findings that he made and the conclusions that he reached in regard to that evidence were properly open to him.

22. As for the second ground, the judge's failure to give reasons for rejecting the sponsor's claim to have lost contact with her mother as lacking in credibility, we agree with Mr McVeety that this is simply a disagreement with the judge's findings and that they were findings open to him on the evidence. The judge was perfectly entitled to find, as he did at [39], that it lacked credibility that the sponsor had spoken to her mother only once since 2019, given that she had travelled to Pakistan to visit her mother at that time when her mother was ill and there was no credible reason for her not to have maintained contact with her mother thereafter. Indeed we note that Dr Saddik reported the sponsor as having told her in August 2020 that she was in contact

with both her parents (page 7 of the report) and as having commented on her mother's health at that time (page 13), albeit that that was not a matter referred to by the judge.

23. We also agree with Mr McVeety that the question of whether or not there was family support in Pakistan was immaterial in any event since the evidence was that the support the appellant and sponsor received in the UK was from each other and there was no evidence to suggest that they required other support. The judge's decision was clearly based on the premise that the appellant and the sponsor would be returning to Pakistan together. He gave full consideration to their claims in their statements of a lack of practical support they would encounter in Pakistan in terms of finances and medical treatment, and concluded at [37] that the sponsor would have access to health services in that country and would be able to secure employment there. The judge noted at [38] that the appellant had spent the majority of his life in Pakistan, and at [39] providing reasons for rejecting his claim that his family would not provide him with some support. Those were all findings the judge was entitled to make on the evidence before him.

24. For all of these reasons we do not consider that any error of law arises from Judge Alis's decision. His decision was based upon a full assessment of all the evidence and cogently reasoned findings and conclusions. He was entitled to reach the decision that he did on the basis of the evidence available to him.

DECISION

25. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. We do not set aside the decision. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 1 December 2022