IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006261

First-tier Tribunal No:
IA/04426/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
29 May 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SAVITA CHABRA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms F Shaw, Counsel, instructed by 1st $Immigration
For the Respondent: Mr E Terrell, Senior Presenting Officer

Heard at Field House on 18 April 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge Herlihy (the judge), promulgated on 2 November 2022. By that decision, the judge dismissed the Appellant's appeal against the Respondent's refusal of her human rights claim. That claim had essentially been based on Article 8 ECHR (Article 8) and the assertion that it would be

disproportionate to remove the Appellant to India. In particular, it was said that following the death of the Appellant's husband in 2019, the Appellant's mental health had significantly deteriorated. Even before this she had been subjected to domestic violence through her husband's family for a significant period. As time went on, her health deteriorated such that by the time of the hearing before the judge there were, it was claimed, very significant obstacles to the Appellant's integration into Indian society.

Decision of the First-tier Tribunal

2. Having set out in some detail the evidence, in particular oral testimony, the judge turned her attention to the report of Dr S Ali, a Consultant Psychiatrist working for the NHS in London. Dr Ali had examined the Appellant on 12 August 2022 and completed his report on 22 August 2022. Dr Ali concluded that the Appellant suffered from complex PTSD and a Depressive Episode at a severe degree. At [27] of her decision, the judge said as follows:

> "The report of Dr Ali relies entirely on the Appellant's account and I note that he has not referred to any of the Appellant's medical records either from India or the United Kingdom in his report and there is no evidence that such records were before him. I am satisfied that the weight I can give to Dr Ali's report is significantly limited by the fact he does not appear to have considered any medical notes or supporting medical evidence, particularly the assessment from Croydon Hospital dated 20/12/2020. I find that the medical report did not comply with the guidance issued in HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC)."

3. At [28] the judge went on to find that there were "some troubling inconsistencies" between Dr Ali's report and the assessment from Croydon Hospital contained in a letter dated 20 December 2020. In summary, the judge noted that a number of material matters raised by the Appellant to Dr Ali had not been mentioned by the Appellant when she attended Croydon Hospital and/or the hospital had not recorded

aspects of claimed mental heath difficulties which had been addressed by Dr Ali.

4. At [29] – [31], the judge noted the absence of any treatment being received by the Appellant. The judge deemed it to be significant that notwithstanding the apparent severe mental health problems suffered, the Appellant had not either sought or been subject to relevant treatment.

5. In light of her analysis of the evidence, the judge effectively concluded that the Appellant's mental health problems were not as severe as had been assessed by Dr Ali. In turn, and in light of a number of other relevant factors, discussed at [32] and [33], the judge concluded that there were no very significant obstacles to the Appellant's integration into Indian society. The appeal was accordingly dismissed on Article 8 grounds.

6. Article 3 ECHR was addressed for the sake of completeness. The judge directed herself to relevant authorities and concluded that the very high threshold had not been met. The appeal was dismissed on that basis as well.

Grounds of appeal

7. The grounds of appeal can be placed into three categories. First, it is said that the judge was wrong to have thought that Dr Ali had not been provided with any medical records: in fact he had been. This error of fact undermined the judge's conclusion as to the weight attributable to Dr Ali's report.

8. Second, the judge was wrong to have concluded that the Appellant had not sought any relevant medical treatment when oral evidence had indicated that she was waiting for an appointment by the time of the hearing.

9. Third, the judge failed to adequately assess relevant factors in relation to the very significant obstacles test. These included the fact that she would return to the old marital home which contained very traumatic memories for her, and that the judge had failed to take account of evidence from the Appellant's son relating to his inability to provide meaningful financial support to her.

10. Permission was granted on all grounds.

The hearing

11. I received concise and very helpful submissions from Ms Shaw. She confirmed that relevant medical evidence, including the Croydon Hospital letter of 2020 and the report from Dr Ray, a Homeopathic Consultant based in India, had indeed been provided to Dr Ali. She confirmed that there had been no GP records as the Appellant had not registered. Ms Shaw candidly accepted that Dr Ali had not referred to any of this medical evidence in his report but, submitted Ms Shaw, he had undertaken relevant assessments of the Appellant's presentation and his report had not been based entirely on her account to him. Ms Shaw submitted that the Appellant's mental health probably had deteriorated between December 2020 and the date of Dr Ali's assessment. In terms of treatment, the evidence before the judge was that the Appellant was waiting for an appointment. Ms Shaw accepted that there had been no evidence as to when the Appellant had sought that appointment. Ms Shaw realistically accepted that the remainder of the grounds of appeal (i.e. consideration of other factors going to the very significant obstacles test) were dependent on the initial argument relating to Dr Ali's report being made out.

12. Mr Terrell emphasised that even if the judge was wrong to have thought that Dr Ali had not been provided with background medical evidence, the fact remained that he had not considered any of this and that was the central point being made by the judge at [27].

13. There were material inconsistencies between the Croydon Hospital letter and Dr Ali's report. It was hypothetical to suggest that the Appellant's mental health may have deteriorated between December 2020 and Dr Ali's assessment in August 2022. The judge had been entitled to find that it was very surprising for the Appellant not to have sought medical treatment sooner if her mental health had been as bad as stated by Dr Ali.

14. In reply, Ms Shaw noted that Dr Ali's report was dated 24 August 2022 and the hearing before the judge took place less than two weeks later. There had been very little time for the Appellant to seek medical treatment.

15. At the end of the hearing, I reserved my decision.

Conclusions

16. Ultimately, I have concluded that the judge did not materially err in law such that her decision should be set aside. I now provide my reasons for that conclusion.

17. I remind myself of the need for appropriate restraint before interfering with a decision of the First-tier Tribunal. In this particular case, the judge had considered a wide range of evidential sources and had clearly dealt with these in a careful manner in almost every respect.

18. I am satisfied that Dr Ali had been provided with the Appellant's and Respondent's bundles prior to writing his report. I am also satisfied that the Respondent's bundle contained medical evidence relating to the Appellant, in particular the Croydon Hospital letter dated 20 December 2020. In this regard, I note Dr Ali's confirmation at the outset of his report that he had been provided with these materials along with relevant instructions from the Appellant's solicitors. Therefore, I am satisfied that the judge was wrong as a matter of fact to conclude that Dr Ali had not been provided with relevant medical evidence.

19. However, that is by no means the end of the story, as it were. In my judgment, Mr Terrell was right to emphasise what was actually said by the judge at [27]. She not only stated – erroneously - that there was no evidence of medical evidence being before Dr Ali, but, significantly, also noted that Dr Ali had not "referred" to any of the medical evidence and, later on in the same paragraph, that he had not "considered" any of that evidence.

20. Having studied Dr Ali's report with care, the judge was entirely correct in that regard. No consideration of any of the background medical evidence, in particular the Croydon Hospital letter, was provided by Dr Ali. The judge was, in the circumstances of this case, plainly entitled to take account of this important omission because the Croydon Hospital letter was, in material respects, seemingly at odds what Dr Ali had recorded and/or concluded (I returned to this, below). The judge was also entitled to find that in this regard Dr Ali's report did not comply with the guidance stated in HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC), the relevant parts of the judicial headnote providing as follows:

> "…
> (3) It is trite that a psychiatrist possesses expertise that a general practitioner may not have. A psychiatrist may well be in a position to diagnose a variety of mental illnesses, including PTSD, following face-toface consultation with the individual concerned. In the case of human rights and protection appeals, however, it would be naïve to discount the possibility that an individual facing removal from the United Kingdom might wish to fabricate or exaggerate symptoms of mental illness, in order to defeat the respondent's attempts at removal. A meeting between a psychiatrist, who is to be an expert witness, and the individual who is appealing an adverse decision of the respondent in the immigration field will necessarily be directly concerned with the individual's attempt to remain in the United Kingdom on human rights grounds.
>
> (4) Notwithstanding their limitations, the GP records concerning the individual detail a specific record of presentation and may paint a broader

> picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal.
>
> (5) Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records.
> …"

It is clear to me that the reference to GP records in no way precludes the potential relevance of a hospital letter in situations where there has been no interaction with a GP.

21. In this case, it is plain that Dr Ali did not engage with relevant medical evidence before him, specifically the Croydon Hospital letter.

22. What was said by the judge at [27] must also be viewed in light of what she said at [28]. Having considered the Croydon Hospital letter and Dr Ali's report, the judge was in my view clearly entitled to conclude that there were "troubling inconsistencies" between the two documents. She accurately recorded the differences between what had been said by the Appellant when examined by the hospital and what she then subsequently reported two Dr Ali and what the relevant medical professionals had themselves assessed and/or stated in the reports. For example, no reference to domestic violence as such was made in the Croydon Hospital letter nor was anything said about PTSD symptoms. In the absence of any analysis of the Croydon Hospital letter by Dr Ali, the judge was left with an inconsistent evidential picture. In all the circumstances, she was entitled to conclude that the weight attributable to Dr Ali's report could be "significantly limited", notwithstanding the factual error as to the provision of background medical evidence.

23. As to Ms Shaw's submission that the passage of time between the Croydon Hospital Letter in 2020 and Dr Ali's report in 2022 explained a deterioration in the Appellant's mental health, I agree with Mr Terrell's point that this was, in effect, just speculation. Indeed, the grounds of appeal themselves state at paragraph 5 that the Appellant's condition "may" have deteriorated during this intervening period. I am satisfied that there was no clear evidence, particularly from a relevant professional, of any such deterioration during those two years and that the judge did not erred by in some way failing to specifically address that speculative argument. I reiterate the absence of any consideration by Dr Ali of the Croydon Hospital letter, and note that the general tenor of Dr Ali's report is that the significant problems apparently suffered by the Appellant when he assessed her had been ongoing for some time. Whether a general belief that things had got worse in the period was expressed in live evidence, it cannot be said to have mitigated against the lack of a clear evidential picture from relevant medical professionals.

24. I turn now to the second category of the grounds of challenge, namely the judge's conclusion that the Appellant had not sought or been in receipt of relevant medical treatment. The first thing to say about this is that there was no evidence before the judge as to when the Appellant had sought an appointment (assuming that she had in fact been waiting for such an appointment at all). It could have been a day before the hearing for all the judge knew. More significantly, however, is the wider point which, on a fair and holistic reading of the judge's decision at [29] – [31], she was seeking to make. Even if the opinions of Dr Ali were taken at face value, the lack of any evidence to show that the Appellant had sought relevant medical treatment prior to seeing him was a consideration which the judge was entitled to attach weight to. As to the value of the weight, that was a matter for the judge.

25. In summary, the judge made no material errors in respect of her assessment of the Appellant's mental health.

26. In terms of the remainder of the grounds, I refer back to the party's submissions in which they both accepted that success depended on the judge having erred in respect of the mental health issue. Given my conclusion on that issue, what is said at paragraphs 8 – 10 of the grounds of appeal falls away.

27. For the sake of completeness, I am satisfied that the judge was entitled to conclude that there were no very significant obstacles. The matters referred to at [32] and [33] of her decision were all relevant and there is nothing to suggest that irrelevant matters were taken into account. Whilst financial support may not have been easy, the judge was fully entitled to conclude that the Appellant's children would be able to provide in a meaningful sense.

Notice of Decision

28. The decision of the First-tier Tribunal did not involve errors of law and that decision shall stand.

29. The Appellant's appeal to the Upper Tribunal is accordingly dismissed .

H Norton-Taylor

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 26 April 2023