IN THE UPPER TRIBUNAL Case No: UI-2022-006335
IMMIGRATION AND ASYLUM CHAMBER First-tier Tribunal No:(HU/51362/2021)

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 May 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Daniyal Ahmed Khan Appellant
(ANONYMITY ORDER NOT MADE)

And

The Secretary of State for the Home Department Respondent

Representation:
For the Appellant: Mr J Gajjar, of Counsel, instructed by Law Lane Solicitors.
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 11 May 2023

DECISION AND REASONS

1. The appellant, a national of Pakistan born on 18 December 1990, appeals against a decision of Judge of the First-tier Tribunal Trent (hereafter the "judge") promulgated on 9 April 2022 following a hearing on 6 April 2022 by which the judge dismissed his appeal on human rights grounds against a decision of the respondent of 15 April 2021 to refuse his application of 7 August 2022 for leave to remain in the United Kingdom on the basis of his human rights.

2. The appellant's lengthy immigration history is set out at para 2 of the judge's decision. For the purposes of my decision, it is sufficient to note as follows:

   (i) The appellant arrived in the United Kingdom on 24 December 2012 by plane.

   (ii) He claimed asylum on 4 August 2019. His asylum claim was refused on 26 November 2019 and certified under ss.96(1) and (2) of the Nationality, Immigration and Asylum Act 2002.

(iii) Between 11 October 2013 and the date of his asylum claim, he made four applications for leave to remain and six applications for a residence card, all of which were refused. His appeal against the refusal dated 3 January 2014 of his first application for leave to remain (on 11 October 2013) was dismissed on 16 October 2014.

(iv) Following the refusal and certification of his asylum claim, he made further submissions on 12 February 2020 which were refused on 15 July 2020.

(v) He then made the application that was the subject of the decision dated 15 April 2021.

3. Before the judge, the appellant relied upon the same matters that he had relied upon in his asylum claim in support of his human rights claim under Articles 2 and 3 of the ECHR.

4. Only certain of the judge's conclusions are challenged in this appeal. The following is a summary of the judge's conclusions:

(i) In relation to the appellant's protection claim under Articles 2 and 3, the judge made an adverse assessment of credibility. He said (para 40) that he was unable to accept the appellant's account as being reasonably likely to be true. He therefore dismissed the appellant's claim under Articles 2 and 3.

(ii) In relation to the appellant's claim under Article 3 in respect of his medical condition, the judge accepted that the appellant suffered from PTSD and was being treated with Sertraline and sleeping tablets (para 42). However, the judge did not accept that the appellant would face a real risk of being exposed to a serious, rapid or irreversible decline in his state of health resulting in intense suffering or a significant reduction in life expectancy (para 43).

(iii) The judge found (at para 51) that the difficulties that the appellant would face on return to Pakistan, considered cumulatively and in the round, did not amount to very significant obstacles to reintegration and that the appellant therefore did not meet the requirements of para 276ADE(1)(vi) of the Immigration Rules.

(iv) In relation to the appellant's Article 8 claim outside the Immigration Rules, the decision was not disproportionate (para 56).

(v) The judge found that there was no real risk of the appellant being rendered destitute on return to Pakistan or that he will face ill-treatment contrary to Article 3 upon return to Pakistan as a result of his financial position (para 58).

5. The grounds dated 22 April 2022, which were not settled by Mr Gajjar, challenged the judge's adverse assessment of credibility in relation to the appellant's protection claim on the basis that, in assessing credibility, the judge had failed to weigh the evidence of the appellant's brother which supported the appellant's claim. In granting permission to appeal, Judge of the First-tier Tribunal M L Brewer observed that the Upper Tribunal may be assisted by a note from Counsel who represented the appellant at the hearing before the judge setting out the substance of the oral evidence of the appellant's brother and/or the recording of the hearing.

6. The appellant was represented at the hearing before the judge by Mr A Alam, of Counsel. No witness statement from Mr Alam was submitted by the time I came to

hear the appeal. At the commencement of the hearing before me, Mr Gajjar informed me that his instructions were to withdraw this ground.

7. The remaining grounds challenge the judge's finding that the appellant did not meet the requirements of para 276ADE(1)(vi) of the Immigration Rules (hereafter ground 1) and his finding, in relation to the Article 8 claim outside the Immigration Rules, that the decision was not disproportionate (hereafter ground 2).

8. Although the remainder of the judge's conclusions, as set out at my para 4 above, are not challenged, it is necessary to take account of part of the judge's reasoning in relation to the protection claim, the Article 3 claim based on the appellant's medical condition and the Article 3 claim based on the appellant's alleged destitution on return to Pakistan. This is partly because the judge's reasoning in relation to the para 276ADE(1)(vi) and Article 8 issues are linked to his reasoning on the other issues and partly because it is trite that decisions of judges should be considered as a whole. Accordingly, in assessing whether the grounds before me are established, I take account of the judge's decision as a whole.

The judge's decision

9. In his consideration of the appellant's protection claim under Articles 2 and 3, the judge considered the medical evidence at para 37 which reads:

> "37. I take into account when considering the credibility of the Appellant's account that he has been diagnosed with PTSD. I have considered the expert medical reports of Dr Amer Mukhtar, a doctor with over 16 years' experience with the NHS, who has a diploma in Clinical Psychiatry from the Royal College of Physicians and a diploma in Psychological Medicine from the Royal College of Surgeons, Dublin, and is an affiliate member of the Royal College of Psychiatrists. His reports are dated 6 October 2020 and 20 March 2021 and are based on examinations of the Appellant undertaken on those dates. In the first report, Dr Mukhtar finds that the Appellant is suffering from PTSD, and records that the Appellant reported that he often relives the traumatic event of being shot at, which makes him very nervous, and that he is afraid of being sent back to Pakistan. In his second report, Dr Mukhtar noted that the Appellant was then being treated for PTSD with the anti-depressant Sertraline and sleeping tablets, that he denied any suicidal ideation aside from "fleeting thoughts", but that he claimed to experience "flashbacks" of his experiences in Pakistan "of being kidnapped and threatened". The Appellant has not sought to correct or explain the reference to his having been kidnapped, despite claiming in his interview that the attempt to kidnap him was unsuccessful. It appears from this that Dr Mukhtar was labouring under at least some degree of misconception when describing the possible reasons for the Appellant's PTSD. I take this into account when considering the effect of the Appellant's diagnosis on his credibility. The Appellant has not filed any more recent evidence regarding his mental health."

10. The judge considered the appellant's Article 3 claim based on his medical condition at paras 42-43 which read:

> "42. As stated above, I have accepted that the Appellant is suffering from PTSD, and I accept Dr Mukhtar's statement that he has been treated with Sertraline and sleeping tablets. In considering Article 3 on medical grounds, I must consider whether the Appellant faces a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or state of health resulting in intense suffering or to a significant reduction in life expectancy. In this regard, the Respondent relies on the CPIN "Pakistan: Medical and healthcare

provisions" dated September 2020, which refers to mental healthcare provision at section 4.12. At paragraph 4.12.7, the CPIN refers to the availability of treatment at hospitals in Lahore, Rawalpindi and Karachi for PTSD, by means of cognitive behavioural therapy, EMDR and narrative exposure therapy, these being the three treatments referred to by Dr Mukhtar. This stands in stark contrast to the Appellant's submission that only religious-based healing is available in Pakistan. Section 5.2 also confirms that Sertraline and various sleeping medications are available in Pakistan, either in pharmacies or online.

43. There can be no suggestion based on the medical evidence relied upon by the Appellant that, with this treatment and these drugs available in Pakistan, the Appellant would face a real risk of being exposed to a serious, rapid or irreversible decline in his state of health resulting in intense suffering or a significant reduction in life expectancy. I make that assessment even taking into account that the standard of medical treatment in Pakistan may be lower than that in the UK. Accordingly, his appeal based on Article 3 on medical grounds is dismissed."

11. In relation to the appellant's Article 8 claim, the judge first considered whether the requirements of para 276ADE(1)(vi) were satisfied, at paras 44-51 which read:

"44. In considering Article 8, I must first determine whether the Appellant complies with the Immigration Rules, specifically paragraph 276ADE. As a 30-year-old adult who has lived in the UK for less than 20 years, he must show on the balance of probabilities that there would be very significant obstacles to his re-integration into Pakistan.

45. In this regard, the Appellant relies on the following matters. First, his diagnosis of PTSD and the treatment he is undergoing for that condition in the UK, and that he has also been referred to the community psychologist for counselling every 2-3 weeks, all of which treatment would cease upon his return. In this regard, I have already determined that PTSD is treatable in Pakistan and it follows that any missed appointments in the UK could be replaced with similar appointments in Pakistan within a reasonable time. Nevertheless, I accept that the condition will necessarily afford the Appellant some disadvantage in reintegrating into Pakistan while he is still requiring treatment.

46. Second, the Appellant says that mental health problems are stigmatised in Pakistan. This is supported to some extent by paragraph 4.12.5 of the CPIN, although it is not clear from that document whether there are differing degrees of stigma associated with different conditions. Paragraph 4.12.3 also notes that it is estimated that 50 million people in Pakistan suffer from mental disorders and that 36% of people suffer from anxiety and depression. It is fair to say that the Appellant would be far from unusual if he were to return.

47. Third, the Appellant says he would struggle to pay for his medication in Pakistan. In this regard, I note and accept the Appellant's brother's candid evidence that he is financially supporting the Appellant and will continue to do so if the Appellant returns to Pakistan, but that he will not be able to support him forever. As such, I find that as at the date of the hearing the Appellant would be able to continue to pay for medicine on return.

48. Fourth, the Appellant relies on his family's political affiliations, his account of which I have rejected and which lend no weight to his submissions in this regard. Fifth, he states that he has no family remaining in Pakistan to support him there, which I accept but must be considered in light of his brother's continuing support. Sixth, the Appellant notes that he has been in the UK for over nine years, and I accept that he will have lost some degree of familiarity with life in Pakistan over that period. Seventh, he states that his parents have now sold the family home in Pakistan, such that he will have nowhere to live on return.

49. **Finally, the Appellant argues that he requires the emotional support of his brother, which he will lose if he returns to Pakistan. His brother's evidence in this regard was that the Appellant suffers dark moods, and his brother will take him out so that he can distract him from his dark thoughts, and that he is concerned that the Appellant will harm himself if he is not with his family. I note in this regard that Dr Mukhtar's most recent report states that the Appellant denied any active suicidal ideation, and the Appellant does not claim to have any such ideation at present.**

50. Considering all these points together, I draw the following conclusions. On return, the Appellant's position will not be easy. He will be able to continue his treatment for his mental health problem and may encounter some social stigma as a result. **He will likely find it difficult to be away from the long-term emotional support afforded to him by his brother,** albeit that there will be nothing to prevent him communicating with his brother regularly by telephone and video, which will assist him in this regard. The Appellant will still benefit from the financial support of his brother, at least until he is able to continue his treatment and, in time, obtain employment – and his evidence, which I accept, is that he has been employed in the UK in the past. Until then, I accept the Appellant's evidence that his brother runs his own business (which the Appellant describes as "blooming successfully") and find that he will on the balance of probabilities be in a position to support the Appellant in the short term in paying for accommodation in Pakistan, where the cost of accommodation is significantly lower than in the UK, at least until the Appellant can obtain employment. The fact that the Appellant has spent little time in Pakistan since his first trip to Australia in 2010 does not present any significant obstacle to his reintegration there: he spent the first 20 years of his life there, speaks Urdu, and will therefore retain significant familiarity with Pakistani life, language and culture. His absence during recent years is not, in my judgement, a significant matter.

51. In conclusion, although the Appellant will undoubtedly face difficulties on return, considered cumulatively and in the round these do not amount to very significant obstacles, and accordingly the Appellant does not meet the requirements of the Immigration Rules."

(My emphasis)

12. The judge then considered the Article 8 claim outside the Immigration Rules at paras 52-57 which read:

"52. Considering Article 8 outside the Rules, the Respondent does not dispute that the Appellant has, over more than nine years spent in the UK, established a private life here, and I agree that he has, through the links and friendships he has no doubt built up during that period. Accordingly, the decision to remove him from the UK engages Article 8. As to family life, the Appellant claims to have established more than the normal emotional ties with his brother and nephew, such that Article 8 is also engaged in respect of his family life (see Kugathas [2003] EWCA Civ 31). In light of my finding that Article 8 is engaged in any event, I do not need to consider this point separately.

53. As the Respondent's decision is in accordance with the law and for a purpose set out within Article 8(2), I will adopt a "balance-sheet" approach in determining whether the Respondent's decision is proportionate to the legitimate public end sought to be achieved.

54. In doing so, I must consider the interests of the Appellant's nephew, a child, as a primary consideration, as he too will be impacted by the Appellant's removal. The Appellant's nephew is now 9 years old. The Appellant in his evidence describes them as having "a close uncle and nephew bond" and his nephew as being "emotionally attached" to him. The Appellant says they often play together, and

the Appellant takes him out. The Appellant's brother states that his nephew has always had the Appellant in his life, and they have a "very special relationship". Taken cumulatively, this does not in my judgement establish that it is of material importance to the Appellant's nephew that the Appellant should stay in the UK with him. They would be able to continue their relationship by telephone and video following the Appellant's departure in any event. On balance, I consider that it would, very narrowly, be in the Appellant's nephew's best interests for the Appellant to stay in the UK, principally because the nephew will be sad if the Appellant leaves, but that although this is a primary consideration it is not a weighty one.

55. Weighing in the Appellant's favour in the balancing exercise are the matters considered above in respect of paragraph 276ADE of the Rules, which I take into account together with my detailed consideration of those matters above. In addition, there is my assessment of the best interests of the Appellant's nephew, which as I say weigh narrowly in his favour, and the facts that the Appellant speaks English (section 117B(2)) and has established friendships and strong bonds with his brother and nephew here. Weighing against the Appellant are the facts that he does not meet the requirements of the Immigration Rules, such that the public interest in maintaining effective immigration control is engaged (section 117B(1)), he is not financially independent (section 117B(3)) and his private life in the UK was formed when his immigration status was precarious, such that little weight can be given to it (section 117B(5)).

56. Weighing all those factors in the round, taking into account the interests of the Appellant's nephew as a primary consideration, there is in my judgement nothing of sufficient significance to outweigh the public interest in the Appellant's removal. Despite the factors weighing in the Appellant's favour, I find that to return him to Pakistan will not interfere with his right to private or family life under Article 8 (or that of any other member of his household) in a manner disproportionate to the public interest in his removal.

57. For the reasons set out above, I dismiss the appeal on Article 8 grounds."

13. Finally, the judge considered the appellant's Article 3 claim based on his destitution upon return to Pakistan at para 58-59 which read:

"58. Finally, having made the findings I have made above, in particular as to the Appellant's brother's ability to support him financially, I find that there is no real risk that the Appellant will be rendered destitute on return to Pakistan or that he will face ill-treatment contrary to Article 3 upon return as a result of his financial position – even considered in light of the entirety of the Appellant's circumstances, taken together.

59. Accordingly, I also dismiss the appeal on Article 3 grounds on this basis."

The grounds

14. Grounds 1 and 2 may be summarised as follows:

(i) Ground 1: In his consideration of para 276ADE(1)(vi), the judge erred in reaching his conclusion that the appellant's brother could provide emotional support through the telephone. This is because the appellant's brother often took him out for food and shopping *"to assist [the] appellant's mental health and the Appellant trusts his brother".* Without such emotional support, the appellant would not access treatment in Pakistan as he is encouraged by the brother to receive treatment. However, it is accepted in the grounds that the brother could provide emotional support by telephone to some extent.

(ii) Ground 2: In his consideration of proportionality in relation to the Article 8 claim outside the Immigration Rules, the judge failed to take into account the emotional support given to the appellant by his brother, the cost of treatment in Pakistan and the access by the appellant to treatment in Pakistan. Without emotional support, the appellant would be unlikely to access treatment and therefore his mental health would only deteriorate.

Submissions

15. In relation to ground 1, Mr Gajjar submitted that the judge had failed to take account of the emotional support provided to the appellant by his brother by his physical presence, i.e. taking the appellant out when he is suffering dark moods so as to distract him from his dark thoughts and encouraging him to access treatment. He submitted that it is the physical proximity of the brother to the appellant that enables the appellant to access treatment in the United Kingdom, evidence which (in his submission) the judge did not consider. Whilst the judge was entitled to say that some support could be provided by the brother to the appellant through the telephone if the appellant is in Pakistan, the support that the brother provided to the appellant went beyond the support that could be given via the telephone.

16. Mr Gajjar relied upon para 7 of the witness statement of the appellant's brother, at AB/p13, where the brother said that, although the appellant had not been able to attend his face-to-face meetings with his counsellor, the fact that he is around members of the family "*has ensured that he does harm himself"* (presumably, the word *"not"* has been omitted accidentally from this phrase). In the United Kingdom, the appellant always has someone to talk to. The brother can see the appellant in the United Kingdom if he is upset and ask him about his day. There would be no one in Pakistan for him and he would be all alone.

17. Mr Gajjar also referred me to page 48 of the medical report of Dr. Amer Muhktar (AB/pp47-51), a speciality doctor in East London NHS Foundation. At page 48, Dr Mukhtar recorded the appellant as having stated, in relation to previous suicidal ideation, that: "*I have thought about jumping from the balcony of my 2nd floor flat but then I [sic] the thought of my family prevented me from doing that*".

18. In addition, Mr Gajjar referred me to the witness statement of the appellant's sister where (at AB/p78), she said: "*One of us [sic] always been with him all the time because of his constant serious condition [sic] I realise that there is something wrong with his mental health, it's hard for us to convinced [sic] him to seek mental help*."

19. Mr Gajjar submitted that the judge failed to take adequate account of the evidence of the appellant's brother and sister, to which he referred me at the hearing (set out above), although the judge considered at para 50 whether modern means of communication could provide some support to the appellant.

20. In relation to ground 2, Mr Gajjar submitted that the judge failed to engage with the medical evidence concerning the appellant's mental health in reaching his decision on proportionality, although he accepted that the judge did cross-refer at para 55 to his findings in relation to para 276ADE(1)(vi). In any event, he submitted that the judge's assessment of para 276ADE(1)(vi) fell short of what was required.

21. On ground 1, Mr Tufan drew my attention to the fact that the judge noted at para 49 that the appellant does not suffer from suicidal ideation at present. He clearly found at para 42 that medical treatment and medication was available in Pakistan. At para

50, the judge found that the appellant would have the financial support of his brother in the United Kingdom until he is able to continue with his treatment and obtain employment. This finding was not challenged in the grounds.

22. On ground 2, Mr Tufan referred to para 182 of HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC) from which (he submitted) it is clear that, in cases which do not succeed under Article 3 on the basis of an applicant's medical condition, the threshold for Article 8 to succeed solely on the basis of the individual's medical condition was high. Mr Tufan also referred me to para 197 of HA, where the Upper Tribunal said that a person's mental health and risk of suicide, if not sufficient to reach the Article 3 threshold, cannot without more enable them to succeed by reference to Article 8.

23. Mr Tufan submitted that, given that it is not suggested that the appellant's medical condition is such that the judge erred in dismissing his Article 3 claim based on his medical condition, his Article 8 claim could not succeed. In relation to the evidence of the appellant's siblings concerning the appellant's suicidal ideation, Mr Tufan asked me to note that Dr Mukhtar had opined that there was no current suicidal ideation.

24. Finally, Mr Tufan referred me to para 55 of the judge's decision where he cross-referred to the reasons he had given earlier in assessing the appellant's case under para 276ADE(1)(vi) which, in Mr Tufan's submission, shows that the judge took his earlier assessment of para 276ADE(1)(vi) into account in deciding the appellant's Article 8 claim. He submitted that the judge was not obliged to repeat the reasons he had given earlier in assessing para 276ADE(1)(vi).

25. In response and in relation to ground 1, whilst Mr Gajjar accepted that the judge had referred to the medical evidence and diagnosis, he submitted that this is not the same as considering the appellant's needs and the impact of removal. He submitted that the judge failed to consider the emotional support provided by the appellant's brother by his physical presence.

26. In relation to both grounds 1 and 2 and the fact that Dr Mukhtar had opined that there was no active suicidal ideation at present, Mr Gajjar submitted that Dr Mukhtar's report was based on an assessment of the appellant in his current circumstances, that is, in circumstances where he has access to the emotional support provided by his brother and sister by their physical presence whereas para 276ADE(1)(vi) concerns what would happen if the appellant is removed. In this regard, Mr Gajjar asked me to bear in mind that Dr Mukhtar had stated in section 3 of his report that the appellant had said that he did not go through with his suicidal thoughts because he thought of his family.

27. In response to my observing that the medical report did not opine on whether the appellant would have suicidal thoughts if he did not have the emotional support of his family by their physical presence, Mr Gajjar submitted that the judge was obliged to interpret the evidence that was before him. The medical report of Dr Mukhtar stated at sections 3 and 4 that the appellant's family was a protective factor.

ASSESSMENT

28. In his opening submissions and in relation to ground 1, Mr Gajjar relied upon the evidence of the appellant's sister, submitting that the judge failed to take her evidence into account. He did not mention the sister's evidence in his opening

submissions on ground 2. In responding to Mr Tufan's submissions, Mr Gajjar related his reliance upon the sister's evidence to both grounds 1 and 2.

29. However, the fact is that the written grounds do not contend, in relation to either of the two grounds, that the judge erred in failing to take into account the evidence of the appellant's sister. Accordingly, Mr Gajjar did not have permission to rely upon the sister's evidence in support of ground 1 or 2. I heard his submissions on the sister's evidence but that must be on a *de bene esse* basis. Counsel was obliged to draw my attention to the fact that he did not have permission to rely upon the sister's evidence in support of either ground. He should have made an application for permission to amend the grounds in order to do so but he did not make such an application.

30. There were two medical reports before the judge, as he stated at para 37. The first is dated 6 October 2020 (AB/p47-51) and the second is dated 20 March 2021 (AB/p52-54). I have considered them both.

Ground 1

31. I do not accept that, in his consideration of para 276ADE(1)(vi) of the Immigration Rules, the judge failed to take into account the emotional support given by the appellant's brother by his physical presence. The judge considered para 276ADE(1)(vi) at paras 44-51. He specifically mentioned, at para 49, that the brother's evidence was that, when the appellant suffers dark moods, he would take him out and distract him from his dark thoughts. The mere fact that the judge stated, in the next sentence, that he had noted that the most recent medical report stated that the appellant denied any suicidal ideation does not mean that the judge discounted the emotional support given by the appellant's brother by his physical presence. He was simply saying that the evidence of the brother that he was concerned that the appellant will harm himself if he is not with his family is ameliorated by the fact that the most recent medical report stated that he did not have any suicidal ideation.

32. Ground 1 therefore ignores the fact that the judge specifically referred at para 49 to the very evidence that Mr Gajjar relied upon, i.e. the evidence of the brother that he takes the appellant out when he has dark moods or thoughts. Furthermore, in the third sentence of para 50, the judge stated: "*He will likely find it difficult to be away from the long-term emotional support afforded to him by his brother, albeit that there will be nothing to prevent him communicating with his brother regularly by telephone or video, which will him assist him in this regard*" (my emphasis). It is clear from the words that I have underlined that the judge plainly had in mind that, if returned to Pakistan, the appellant would lose the emotional support that his brother provides by his physical presence.

33. There is therefore no substance at all in the ground that the judge failed to take into account the emotional support provided by the appellant's brother by his physical presence.

34. In his submissions, Mr Gajjar relied upon the risk of suicidal ideation if the appellant did not have the emotional support of his brother by his physical presence and (for which he does not have permission) that of his sister.

35. However, the fact is that the judge noted that the most recent medical report states that the appellant had denied any active suicidal ideation. Mr Gajjar's submission (para 26 above) that Dr Mukhtar's report was based on an assessment of the appellant in his current circumstances whereas para 276ADE(1)(vi) looks to the

future means that Mr Gajjar was saying, in effect, that Dr Mukhtar's opinion did not concern the future. I reject the suggestion that Dr Mukhtar's opinion was limited to the then current circumstances and that he was not considering the potential implications for the appellant's mental condition of his being required to leave the United Kingdom, given that the medical reports state, inter alia, as follows:

(i) At para 1.1) of his first report (AB/p47), Dr Mukhtar stated that he was instructed by Krizma Medix Limited to prepare a medical report on the appellant "*in relation to his immigration issues*" and his second report (AB/p53)that he was again instructed by the appellant's solicitor to "*update his mental health condition … in relation to his immigration status*".

(ii) Although Dr Mukhtar did not set out the questions that he was asked to answer in either of his reports, it is nevertheless clear from the content of the reports, that he was aware that "*the immigration issues*" in question concerned the appellant's return to Pakistan and his ability to cope there. In this regard, see, for example:

(a) para 5.d) under the heading "*Mental State Examination*" and the sub-heading: "*Thoughts*" of the first report (AB/49), he noted that the appellant had expressed his fear of being sent to Pakistan and that he had said that "*he will not be able to re-adjust to life in Pakistan …*";

(b) the final paragraph before the heading "*7. Declaration*" of the first report (AB/50), the opinion expressed by Dr Mukhtar that: "*In my opinion a favourable outcome of his immigration case will have an overall positive impact on his mental health";* and

(c) In the second and third paragraphs under the heading "*Mental State Examination*" in the second report (AB/p53), he said that the appellant had expressed his concerns regarding his outstanding immigration issues and fear of being sent back to Pakistan and that he had stated that he had no connections of any sort left in Pakistan.

36. I do not accept Mr Gajjar's submission that, notwithstanding the fact that Dr Mukhtar did not opine that there would be an active suicidal ideation if the appellant is removed to Pakistan, the judge was obliged to interpret the evidence before him and decide whether the appellant would have an active suicidal ideation if he no longer had the physical presence of his family as a protective factor, for the following reasons:

37. Firstly, the submission (in effect) that the appellant's family would no longer represent a protective factor if they were not physically present ignores the fact that the appellant did not say to Dr Mukhtar that it was the emotional support of his brother and/or other members of his family by their physical presence that made him desist from having any active suicidal thoughts or plans. What he said was (at AB/p48):

> "He admitted to suicidal thoughts by jumping from the balcony of his flat but then feels that it will hurt his family".
>
> "In his risk of previous suicidal ideation he stated 'I have thought about jumping from the balcony of my 2nd floor flat but then I the [sic] thought of my family prevented me from doing that".

38. There was no suggestion, in what the appellant told Dr Mukhtar, that it was the emotional support of his family by their physical presence, *as opposed to his thoughts of them*, that was the protective factor. It simply cannot be said that he would lose this protective factor as there is no evidence that his thoughts of his family as a protective factor would cease just because he is no longer in their physical presence.

39. There was therefore no evidence to support the assertion that the appellant's risk of suicide would increase if he were no longer able to have the emotional support of members of his family including his brother by their physical presence in his life.

40. Secondly, Mr Gajjar was effectively submitting that the judge should have speculated on the issue. I am satisfied that the judge did not err in law by not going beyond the medical reports before him on the issue of the risk of suicidal ideation in the event of the appellant not having the emotional support of his family by their physical presence. This should have been the subject of expert medical evidence. In any event, and as I have explained above, there was no evidence before the judge that it was the emotional support of members of his family (including his brother) by their physical presence, as opposed to the appellant's thoughts about them, that acted as the protective factor.

41. For the reasons given above, Judge Brewer was incorrect in stating, in her grant of permission, that it was arguable that, in his assessment of whether there were very significant obstacles to the appellant's reintegration in Pakistan, the judge had "*insufficient regard to the evidence that residing with his family in the UK (i.e. their physical presence) operated as a protective measure against suicide, suicidal ideation and mental health deterioration*". There was no such evidence in relation to suicide and suicidal ideation, as I have said above. There was no such evidence in relation to mental health deterioration either, because Dr Mukhtar stated in his first report (AB/p50): "*In my opinion a favourable outcome of his immigration case will have an overall positive impact on his mental health"* and in his second report (AB/p54) *"I am of the opinion that a favourable outcome of [the appellant's] immigration case will help improve his mood and anxiety"* but he did not say that the appellant's mental health will *deteriorate* if he were to be returned to Pakistan.

42. There is therefore no substance in ground 1. The judge did not err in law in his consideration of whether the appellant met the requirements of para 276ADE(1)(vi) of the Immigration Rules, i.e. whether there would be very significant obstacles to his reintegration in Pakistan.

43. For the reasons given above, even if Mr Gajjar had had permission (which he did not) to argue that the judge had failed to take account of the evidence of the appellant's sister, the judge did not err in law in not referring specifically to her evidence. In addition, it is clear from the context of the evidence she gave in her witness statement, that the sentence relied upon by Mr Gajjar and which I have quoted at para 18 above, concerned historic events in 2018 or early 2019 because it is clear from the context that the sentence relied upon by Mr Gajjar concerned the period before "*[the appellant] started to seek help from psychiatric*" in "*late 2018 or in the beginning of 2019*" following which he began medication "*after a few session*". Finally, and in any event, judges are not obliged to isolate and deal with every aspect of the evidence before them. The mere fact that the judge did not mention the sister's evidence does not mean that he did not take it into account. The judge specifically stated at para 11 of his decision that he had considered each of the documents

provided to him together with all of the evidence before him and taken a cumulative and holistic approach to the totality of the evidence before him.

Ground 2

44. Mr Tufan referred me to HA (Sri Lanka) and submitted that, in cases which do not succeed under Article 3 on the basis of an applicant's medical condition, the threshold was high for Article 8 to succeed solely on the basis of the individual's medical condition. However, the fact is that the appellant's Article 8 claim was not solely based on his medical condition. He also relied, inter alia, on private life established in the United Kingdom, the length of his absence from Pakistan, obstacles to reintegration besides his medical condition and relationship with his nephew.

45. In the written grounds, it is contended in ground 2 as follows:

(i) The judge failed to take into account the emotional support of the appellant's brother, the implication being that it is the emotional support provided by his brother *by his physical presence* that the judge failed to take into account. I have dealt with this in the context of ground 1.

(ii) The judge failed to take into account the cost of treatment. However, in his consideration of para 276ADE(1)(vi) which he subsequently incorporated into his consideration of proportionality, the judge specifically dealt with the cost of treatment at para 47.

(iii) The judge failed to take into account the appellant's access to treatment, i.e. that without emotional support, the appellant would be unlikely to access treatment and therefore his mental health would only deteriorate. However, the judge's finding that the appellant would still have some support from his family albeit from a distance was not challenged. Furthermore, the submission ignores the fact that there was no medical evidence that, without the support of his family by their physical presence, the appellant would not be able to access treatment. In any event, the judge specifically considered, in assessing para 276ADE(1)(vi) which he later incorporated into his reasoning in relation to proportionality, the impact on the appellant being away "*from the long-term emotional support afforded to him by his brother*" in the context of his treatment in Pakistan. He clearly had this in mind in reaching his decision on proportionality, given that he cross-referred at para 55 to his earlier assessment of para 276ADE(1)(vi).

I have also noted that it appears that nothing was said in evidence before the judge why members of the appellant's family are not able to go to Pakistan with him, at least temporarily in order to help him settle down. Dr Mukhtar records in his second report (last sentence on AB/p53) that the appellant had said that his parents had applied for extension of their visas. Given that it was for the appellant to establish his case under para 276ADE(1)(vi) and Article 8, evidence should have been led as to why his parents at least were not able to return to Pakistan with him, either temporarily or permanently, and provide him with support.

46. I reject Mr Gajjar's submission that the judge failed to engage with the medical evidence concerning the appellant's mental health in reaching his decision on proportionality as being without substance. It is simply not the case that the judge

failed to take into account the medical evidence concerning the appellant's mental health in reaching his decision on proportionality. He specifically stated at para 55, as Mr Gajjar acknowledged, that:

> "Weighing in the Appellant's favour in the balancing exercise are the matters considered above in respect of paragraph 276ADE of the Rules, which I take into account together with my detailed consideration of those matters above…."

47. On any reasonable view, "*the matters considered above in respect of paragraph 276ADE of the Rules"* included the judge's assessment of the medical evidence at paras 45-47. As Mr Tufan submitted, there was no need for the judge to repeat his earlier assessment.

48. Ground 2 is therefore devoid of substance.

49. For all the reasons given above, the judge did not err in law.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside.

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

Upper Tribunal Judge Gill Date: 20 May 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent' is that appearing on the covering letter or covering email**