



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-005074
First-tier Tribunal Nos:
LH/04584/2023
HU/51288/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 04 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MUHAMMAD HANIF
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aurang Zeb, In-house Counsel, Charles Morgan Law
For the Respondent: Mrs Amrika Nolan, Senior Home Office Presenting Officer

Heard at Field House and via Teams on 13 March 2024

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Hawden-Beal promulgated on 5 November 2023 (“the Decision”). By the Decision, Judge Hawden-Beal dismissed the appellant’s appeal against the decision of the respondent made on 17 January 2023 to refuse his application for leave to remain in the UK outside the Immigration Rules.

Relevant Background

2. The appellant is a national of Pakistan, whose date of birth is 24 May 1979. He entered the UK on 7 April 2011 as a Tier 4 (General) student migrant, with valid entry clearance until 30 March 2012. He successfully renewed his student visa on two occasions, culminating in a last grant of leave until 15 December 2014. Thereafter, the appellant overstayed.

3. On 1 October 2021 the appellant submitted an application for leave to remain outside the Rules. At that stage he did not claim to have established family life in the UK, and therefore the application was considered as a claim on private life grounds only.
4. In the refusal decision, the respondent considered whether there were exceptional circumstances in his case which rendered a refusal a breach of Article 8 ECHR because it would result in unjustifiably harsh consequences for him, a relevant child or another family member.
5. The respondent also reviewed the application to determine whether Article 3 ECHR was engaged as a result of the appellant's mental issues, including anxiety and depression. The respondent made reference to the case law of *AM (Zimbabwe)* [2020] UKSC 17, and to a response to a Medical Country of Origin Information request on the topic of psychiatric treatment in Pakistan. The respondent did not accept, in light of the above, that his removal from the UK would reach the high threshold of severity to breach Article 3 ECHR on medical grounds.
6. The respondent said that consideration had also been given to his claim regarding Article 8. Any private life or ties in the UK had been established with the full knowledge that he did not have permission to remain here permanently, and that he never been given a legitimate expectation of stay.

The Hearing Before, and the Decision of, the First-Tier Tribunal

7. The appellant's appeal came before Judge Hawden-Beal sitting at Birmingham on 20 October 2023. Both parties were legally represented, with Mr Zeb appearing on behalf of the appellant. The Judge received oral evidence from the appellant and his brother. She treated the appellant as a vulnerable witness because of his mental health. The appellant adopted as his evidence in chief his witness statement of October 2023. In his statement, he said that he suffered from mental health problems and that he was receiving medical support for this from Birmingham and Solihull Mental Health. His mental health had deteriorated, and he suffered from suicidal tendencies and depression. He was currently receiving treatment and support for this condition. He relied upon his brother, HZ, and his family to provide him with support for his daily tasks. At the present time, he understood that his medication dosage was being increased, and that this was for the next 6 months at least.
8. Exhibited to the appellant's statement were documents in reverse chronological order evidencing the medical treatment that the appellant had been receiving since the summer of 2021.
9. In a letter dated 22 July 2021, a Psychological Well-being Practitioner at Birmingham Healthy Minds ("BHM") thanked the appellant for attending his initial assessment. He reported currently experiencing difficulties with

his anxiety, worry and low mood. They had agreed that the main focus of the intervention with BHM would be to develop coping strategies to help him cope better with his difficulty.

10. In a letter dated 10 January 2023, addressed "To whom it may concern", the appellant's GP said that the appellant had previously consulted with symptoms of anxiety and had been referred to Talking Therapies. Most recently he had consulted with symptoms of depression and anxiety, and he was referred to the Community Mental Health Team, but they had not yet had back any correspondence from them.
11. On 25 July 2023, Dr Akter, Locum Consultant Psychiatrist at Birmingham and Solihull Mental Health, reported to the appellant's GP on a review of the appellant that had been carried out on that day. At the beginning of the report, he made reference to a primary diagnosis of First Episode Psychosis, and most likely Psychotic Depression. As from 'today', his Mirtazapine medication had been increased to 30mg daily and a new prescription of Ariprazole at 5mg daily had been initiated.
12. There was an ongoing risk of self-harm from emotional distress. His last attempt at self-harm was around 15-20 days ago, to cope with stress. He used a kitchen knife to cut himself. He had fleeting suicidal thoughts, but he had no intention to act upon them now. But if he was deported back, he would have nothing to live for, and he planned to commit suicide at that stage.
13. Towards the end of the report, Dr Akter gave a more detailed account of his meeting with the appellant. He reported having no support or financial means in Pakistan if he was deported. He was also worried about his mental healthcare in Pakistan, as he had no money to access healthcare which was private in Pakistan. He reported having no protective factors in Pakistan, whereas he had a caring brother with whom he lived and who financially supported him in Birmingham. He reported that Mirtazapine was helpful initially, but not currently. He was happy to increase the dose and to add Ariprazole to his treatment regime. Dr Akter concluded by outlining a management plan, in which he stated that the next appointment would be within 6-8 weeks and that he would issue a letter for the Home Office as requested by the patient.
14. In the Decision, the Judge gave a detailed account of the oral evidence of the appellant and his brother, beginning at para [12].
15. In cross-examination the appellant was asked if he had undertaken counselling, as suggested by the psychologist in the letter of February 2022 at page 102 of the bundle. He said that he could not recall, but he did have regular telephone calls from the Mental Health Team and his GP. He was asked if he had had any follow-up appointments with the Mental Health Team since July 2023. He said that he got a call every week to 10 days to see how he was. He had only had telephone calls since then. There was no evidence of those calls because he was not asked to provide

any. He said that he took two tablets - one in the morning and one at night - and the dose had been increased.

16. He was asked why his mental health would deteriorate if he went back to Pakistan. He replied that Pakistan was different and even a right-minded person would get depression there. He was asked if he had spoken to his consultant about what would happen to him if his medications were stopped, and he said that no one had asked for that.
17. The appellant was asked if he had tried to see a mental health consultant. He said he was given a letter which he had submitted. He said that his brother had tried to get a report for him, but he didn't know if he had got one.
18. In answer to questions from the Judge, the appellant said that he had never had to go to hospital after self-harming himself, and that he had a different medication for the morning and evening (Mirtazapine and Aripiprazole) and that they were given to him by the Psychologist (sic), and the dose for both was increased last week.
19. In his oral evidence, the appellant's brother, Mr Hader Zaman, said that he tried a few times to obtain a psychiatric report on the appellant without success. He said that he thought the appellant's mental health would get worse if he went back to Pakistan, as he had not been back there for over 8 years. He was used to being here and things would be hard for him. He would struggle, even though he had lived there for most of his life, because things had changed. He agreed that the appellant still spoke to their mother and their brother, but his children no longer lived there. He spoke to his children when they visited their grandmother, but he hardly ever spoke to his wife.
20. As recorded at para [20], he said that the letter from the Mental Health Trust had said that he might harm himself if he went back, *"but that is what he told them he would do."*
21. The Judge's findings began at para [26]. At [30], the Judge held that it was quite clear that the appellant could not meet the requirements of the Rules in relation to his family life, because even though he had his brother and family here, those relationships did not meet the definition of family life under the Rules, which was restricted to a partner and any dependent children here in the UK.
22. At para [33], the Judge said that she was satisfied that it was likely that he and his wife were estranged, but she found that the appellant still had his family home in which his mother, brother and his brother's family all lived.
23. At para [34], the Judge directed herself that under rule 276ADE she had to consider whether the appellant demonstrated that there were very significant obstacles to his reintegration as at the time he made the

application in October 2021. The evidence before her showed that in July 2021 he had been referred to Healthy Minds for anxiety, low mood and worry, and he was offered appointments with a Psychological Well-being Practitioner to show him coping strategies for managing his anxiety and low mood. There was an undated letter from his GP which confirmed that he was under the care of Healthy Minds, and had also been considered suitable for medication, and that he had been prescribed 50mg Sertraline on a daily basis.

24. At para [36], the Judge held that none of the evidence before her indicated that the appellant's mental health in October 2021 was a very significant obstacle to his integration back into Pakistani society. Treatment and medication were available, and the September 2020 CPIN noted that patients pay 20% of the costs of psychiatric treatment.
25. The Judge addressed proportionality at paras [38] onwards. At para [44], she cited the respondent's Guidance on Exceptional Circumstances, version 9, dated May 2023, for the proposition that independent medical evidence could establish that a physical or mental disability, or a serious illness which requires ongoing medical treatment, would lead to very serious hardship. At para [45], the Judge held that in the present case there was no independent medical evidence to demonstrate that the appellant's mental illness, which she assumed required ongoing treatment, would lead to very serious hardship if he was returned to Pakistan because of the lack of treatment there. At para [46], she said that there was no medical evidence to say that returning him to Pakistan would lead to very serious hardship, and there was no Country Expert report to detail exactly what the state of the mental healthcare was in Pakistan, and there was his family available to care for him. The fact that he suffered with his mental health, which was treatable in Pakistan, did not demonstrate that refusing him leave to remain because of his condition was unjustifiably harsh. Sending the appellant back to a country which could not treat his conditions or where he could not access such treatment would have unjustifiably harsh consequences for him and his family, but that was not the case here.
26. At para [47], the Judge said that she could not be satisfied that the appellant was suffering from a serious illness within the definition of *AM* [2022] UKUT 131 (IAC), because there was no medical evidence before her to show that he was seriously ill which is the first hurdle that the appellant had to cross under the above case-law. Nor was there any evidence to show that there were substantial grounds for believing that, as a seriously ill person, he would face a real risk that he would suffer an irreversible decline in his health, and there would be a reduction in his life-expectancy because either because no treatment was available to him in Pakistan or he would not be able to access such treatment. This was because the September 2020 CPIN made it clear that there was treatment available to him in Islamabad, which was 80km away from his family home, and he had both brothers there, who between them could support him if needed.

The Grounds of Appeal to the Upper Tribunal

27. Mr Zeb settled the grounds of appeal on behalf of the appellant. Ground 1 was that the Judge had erred in law in failing to conduct a correct assessment of the Article 8 factors once she was satisfied that the appellant had a family life with his brother in the UK. Ground 2 was that the Judge had erred in law in adopting the wrong approach to the medical evidence when making an assessment as to whether Article 3 ECHR was engaged. The Judge had wrongfully or irrationally disregarded the medical evidence provided by Birmingham and Solihull Mental Health in July 2023, and had instead focused on the old medical evidence of October 2021.

The Reasons for the Eventual Grant of Permission to Appeal

28. On 28 November 2023 Judge Saffer granted permission for the following reasons:

“It is arguable that the Judge may have materially erred in not appearing to place any weight within the assessment of the medical evidence and the private life issues arising from that on the psychiatric report of 25 July 2023 which notes the appellant’s psychosis and risk of harm.

All grounds can be argued although to me this appears to be stronger than the family life argument.”

The Rule 24 Response

29. In a Rule 24 response dated 6 December 2023, Tony Melvin of the Specialist Appeals Team gave detailed reasons for opposing the appeal on behalf of the respondent. He accepted that the skeleton argument provided to the hearing mentioned a report dated 25 July 2023 in the context of the Article 3 submissions. But the Judge heard extensive cross-examination of the appellant and his brother, which included being asked about the letter from the Mental Health Trust and the fact that the brother had tried to obtain a psychiatric report but without success. The letter from Dr Akter was based solely on what he was told by the appellant, and was a review - not a psychiatric report, as claimed in the grounds of appeal. There was no indication that the appellant was tested to form a view of first-episode psychosis, mostly likely psychotic depression. Given that the letter was not a psychiatric report on the appellant, it was not incumbent upon the Judge to make specific findings on it as if it were an expert report: see *HA (Expert evidence, mental health) Sri Lanka* UKUT 00111 [2022] (IAC).

The Hearing in the Upper Tribunal

30. At the hearing before me to determine whether an error of law was made out, both representatives attended remotely via Teams. At the outset of the hearing, Mrs Nolan sent a copy of the Rule 24 response by email to me and Mr Zeb, as it had not found its way to either of us.

31. After Mr Zeb had had an opportunity to consider its contents, he proceeded to develop the grounds of appeal which he had settled. He accepted that the review of 25 July 2023 did not have the status of an expert report that was compliant with the Tribunal Procedure Rules, but he submitted that nonetheless its content should have been expressly considered by the Judge in her discussion.
32. On behalf of the respondent, Mrs Nolan developed the case put forward in the Rule 24 response. Although there was no specific reference in the Decision to the review, the Judge had taken into account the treatment that the appellant was receiving under the management plan set out in the review. The Psychiatrist in the review did not say in terms that the appellant now presented with an increased risk of suicide. The Psychiatrist simply recorded what the appellant had told him he would do. The appellant's brother had also made the same point in cross-examination when questioned as to the risk that the appellant would face on return. The brother treated the review as recording what the appellant said he would do on return to Pakistan - not as offering an opinion that he would carry out his threat.
33. After hearing briefly from Mr Zeb in reply, I reserved my decision.

Discussion and Conclusions

34. As the Decision is impugned on the basis that the Judge's reasoning is inadequate, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration...Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

35. Ground 1 was not pursued with any vigour by Mr Zeb, and on analysis this ground is no more than an expression of disagreement with an assessment that was reasonably open to the Judge on the evidence and that was legally sound. So, Ground 1 is not made out.

36. As to Ground 2, the review of July 2023 was not relevant to the assessment of the question of whether there were very significant obstacles to the appellant's re-integration into life and society in Pakistan, as the question of whether the appellant qualified for leave to remain under Rule 276ADE(1)(vi) had to be assessed by reference to the evidence as it stood at the date of application. Accordingly, the Judge rightly focused at that stage of the Decision on the medical evidence as it stood in October 2021.
37. With regard to the claim under Article 3 ECHR, this needed to be assessed as of the date of the hearing. Accordingly, the review of July 2023 was relevant to the assessment. Although the Judge did not make express reference to its contents, it is clear that it was the subject of cross-examination and also re-examination, and that the Judge took it into account. In particular, she asked the appellant whether he had needed to go to hospital as a result of self-harming. She must have been prompted by the review to ask this question, as the topic of self-harm is not raised elsewhere in the medical evidence.
38. It is also tolerably clear that the reason why the Judge did not make express reference to the review was because the letter which the Psychiatrist had promised to provide following the review had not materialised. Accordingly, what the Judge was presented with was what was effectively an internal review which was based on a deterioration of symptoms reported by the appellant. The Judge was not presented with a psychiatric report addressed to the Home Office in which the Psychiatrist made an assessment of the reliability of what the appellant was telling him, or offered his professional opinion as to the likelihood of the appellant carrying out his stated plan to kill himself on return to Pakistan; and/or whether and to what extent such a threat (if credible) would be extinguished or mitigated by the new treatment regime that he had initiated on the day of the review.
39. For the above reasons, the Judge did not err in law by not treating the diagnosis of First Episode Psychosis and Psychotic Depression in the review as a confirmed diagnosis that still applied at the date of the hearing, and nor did the Judge err in law by not giving decisive weight to the review in her assessment of whether, having regard to the totality of the evidence – including the oral evidence – the claim under Article 3 ECHR was made out.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. The appellant's appeal to the Upper Tribunal is dismissed.

Andrew Monson
Deputy Judge of the Upper Tribunal

First-tier Tribunal Nos: LH/04584/2023
HU/51288/2023
Immigration and Asylum Chamber
25 March 2024