IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004341

First-tier Tribunal No: HU/60940/2023
LH/00773/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20 January 2025

Before

UPPER TRIBUNAL JUDGE HOFFMAN
DEPUTY UPPER TRIBUNAL JUDGE MERRIGAN

Between

AKSHARAM VEERAVELLY
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P. Turner, Counsel
For the Respondent: Ms S. Cunha, Senior Home Office Presenting Officer

Heard at Field House on 3 December 2024

DECISION AND REASONS

Introduction

1. The appellant is a national of India, born on 1 April 1990, with permission to appeal against the decision ("the decision"), dated 30 June 2024, of First-tier Tribunal Judge J.P. Howard ("the judge") dismissing his appeal against the respondent's decision, dated 30 August 2023, refusing his application for leave to remain. The appellant's case is that his removal from the UK would breach his rights under Articles 3 and 8 of the European Convention on Human Rights ("ECHR").

Background

2. The appellant entered the UK on 28 May 2010 as a student with a Tier 4 visa valid from 10 May 2010 until 1 July 2012. He has not returned to India since.

3. He made his first application for leave to remain as a student ("LTR") on 3 August 2010: this was granted until 5 October 2011. He made another such application on 1 July 2011, which was refused on 5 October 2011. Thereafter the appellant made several applications for LTR, all of which were refused or rejected. The most recent application – wherein the appellant applied for permission to apply as a family member – was refused on 30 August 2023. The appeal heard by the judge was in respect of that refusal.

4. The judge heard evidence from several witnesses in support of the appellant, as well as the appellant himself, on the support he has from his friends he has in the UK. Of the witnesses, only one, Mr Laughlane, was found to be a credible witness [59]; and some attracted adverse comment. The appellant also claimed that he was in a relationship, although conceded in his evidence that he no longer was. None of these findings specifically were challenged before us, albeit that the appellant does say that more weight generally should have been given by the judge to the relationships that the appellant has built up in the UK. The judge's global finding on the appellant's relationships is at [62]:

> "I accept that the appellant has made friends in the United Kingdom and has a private life built up over the past 14 years. However, I am also satisfied that the friends that the appellant has made will be able to keep in contact with the appellant by modern means of communication or could visit the appellant should he return to India."

5. The judge made the following further findings in respect of the friends and family available or unavailable to assist the appellant were he to return to India:

    a. He was not satisfied that the appellant had no friends or family to assist him in India [75]. His friends in India would be able to help him reintegrating back into India [91].
    b. As he resided in India for the first 20 years of his life, the appellant will have retained knowledge of life, language and culture in India [76].
    c. The appellant has shown *"great fortitude"* in establishing a private life in the UK; and this would assist him should he return to India [77].
    d. The appellant had no expectation that he would be able to remain in the UK indefinitely as he would have known when applying to enter as a student that this was not a route to settlement [78].
    e. *"Considering the evidence holistically, I am not satisfied that the appellant has demonstrated that there will be very significant obstacles to his return to India*" [79].

6. The main focus today however has been on the judge's medical findings. The judge treated the appellant as a vulnerable witness; and accepted the diagnosis made by Dr D'Agnone in a psychiatric report dated 25 March 2022 that the appellant suffers from adjustment disorder and recurrent depressive disorder in his decision at [21] to [23]. The judge specifically accepted that Dr D'Agnone possessed the necessary qualifications and expertise [64]. At paragraph 11.16 of the report, Dr D'Agnone recommended that the appellant *"requires the stability and security currently provided by his friends and family in the United Kingdom, and continue the treatment he is currently receiving through the NHS to keep him stable"*. However, the judge also placed only limited weight on his

report: as it is more than two years old without any update; and Dr D'Agnone appeared to accept the appellant's a reporting at face value [67]. Notwithstanding that, the judge found at [69]:

> "Considering the medical evidence holistically, I am prepared to accept that the appellant has been suffering mental health issues including suffering from depression and anxiety over several years."

7. The judge made further medical findings.

    a. The GP records only go up to September 2023 and nothing more current was provided [68].
    b. The judge was satisfied, considering UK Home Office, Country Information Note - India: Medical and healthcare provision (April 2023), 11 May 2023, that *"there are medical facilities available in India who would be able to provide the appellant any treatment that he requires on return to India for his mental health issues"*; and the same is true for physical treatments [[70] to [74]].
    c. Specifically addressing the appellant's prescription medication, the appellant could obtain appropriate medication in India [87].

Permission to appeal

8. Permission to appeal was granted by Upper Tribunal Judge Meah on 27 September 2024. The application was made out of time but an extension was granted on the basis of the appellant's mental health. Permission to appeal was not restricted to any grounds, but Judge Meah commented as follows.

> "The first ground is arguable. The Judge acknowledged the expert medical report and other additional medical evidence relied on at [67]-[68], although he appears not to have assessed the report in particular given that it was said to be from two years prior to the date the appeal was heard. The Judge also did not consider this or the other evidence in the light of the guidance in JL (medical reports-credibility) China [2013] UKUT 145 (IAC) (08 April 2013) and/or AM (Article 3, health cases) Zimbabwe [2022] UKUT 131 (IAC) (22 March 2022) (he only mentions AM Zimbabwe when it was decided at the Supreme Court), which were arguably relevant given that the Judge was faced primarily with assessing a medical report and a concomitant Article 3 ECHR claim.
>
> It is also arguable that there is a paucity of reasoning on why the Judge decided not to place weight on the totality of the medical evidence that was placed before him despite acknowledging its existence. This was important given the Judge's acceptance at [69] that the appellant was suffering from mental health issues, including suffering from depression and anxiety over several years, and the fact that he was said to also be suffering from suicidal ideation. The reasoning given is arguably inadequate. The second ground is weak, and the third ground is linked to the first ground."

The Grounds of Appeal

9. The grounds of appeal are dated 16 September 2024. There are three grounds upon which the appellant relies to demonstrate an error of law, all relating to the appellant's health.

    a. Ground 1: failure to consider medical evidence and make proper fact-finding.
    b. Ground 2: insufficient consideration of paragraph 276ADE(1)(vi) and protected rights.
    c. Ground 3: failure properly to consider the protected rights and discretionary leave under Articles 3 and 8 of the ECHR.

10. Ground 1 argues that, while the judge makes reference to the report of Dr D'Agnone and the appellant's diagnosis therein, he did not take into account further and more recent medical evidence before him.

    a. A letter provided by The Listening Place dated 8 February 2024 confirms a referral was made to them by Community Living Well: a charity providing face-to-face support for people with suicide ideation.
    b. A letter from Community Living Well dated 10 January 2024 that confirms the appellant is under their care and receiving CBT treatment.

11. Therefore, according to the appellant, the decision is doubly flawed: not only did the judge fail to take this evidence into account, but he was wrong to say that there was no further medical evidence beyond September 2023. The appellant relies on headnotes 1 and 2 of Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC), which we reproduce with Mr Turner's emphasis in italics.

> "(1) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge.
>
> (2) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, *the fact-finding process cannot be criticised* and the relevant Country Guidance has been taken into account, *unless the conclusions the judge draws from the primary data were not reasonably open to him or her*."

12. Ground 2 argues that in concluding the appellant would not face very significant obstacles should he return to India, the judge failed to take into account the appellant's medical health.

13. Firstly, the appellant's case is that his limited family in India would be unable to care for him. The appellant was not cross-examined on this before the First-tier Tribunal, and as such he argues that his evidence should stand.

14. Secondly, the treatment the appellant needs and is undergoing in the UK is, he claims, either inadequate or unavailable in India. The appellant relies on Kamara v SSHD [2016] EWCA Civ 813 and Parveen v SSHD [2018] EWCA Civ 932.

15. Ground 3 builds on the first two grounds to argue that, as the judge failed properly to consider the totality of the medical evidence; as well as the lack of

support of friends and family and the unavailability of necessary medical treatment in India, the judge should, having taken the appellant to be a vulnerable person at [69], have gone on to grant the appeal. The appellant relies on Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) to make the point again that decisions must provide clear reasons on the key conflicts which, here, are lacking.

Rule 24 Response

16. The respondent's rule 24 response, drafted by Ms Cunha, is dated 31 October 2024.

17. In response to ground 1, as to whether the judge had regard to evidence post-dating September 2023, Ms Cunha argues as follows.

    a. The Listening Place evidence raises a question as to how long the appellant has been receiving treatment for. In stating *"I am prepared to accept that the appellant has been suffering mental health issues including suffering from depression and anxiety over several years"* [67], the judge may be said to have given the appellant the benefit of the doubt.

    b. The finding at [70] to [73] that there are available medical facilities in India obviously implies that the judge had regard to the Community Living Well evidence, even if he did not say it: otherwise the judge's record that *"the respondent contends that treatment is available in India for the medical condition that the appellant suffers"* has no context.

18. More generally, it is said that the judge was entitled on the evidence to find that *"the report of Dr D'Agnone appears to accept the appellant's account at face value despite it being disputed by the respondent"* [67]. This explains why he went on to find that he could only place limited weight upon it. Meanwhile, the judge's analysis of the appellant's GP records at [68] to [69] ensured a comprehensive evaluation. The respondent relies on HA (expert evidence: mental health) Sri Lanka [2022] UKUT 00111, which observes at headnote 4 that *"...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 psychiatrist..."*.

19. The rule 24 response next turns to ground 3. It is argued that, whatever gap may be left by a lack of reference to JL (medical reports-credibility) China and AM (Article 3, health cases) Zimbabwe, it is filled by the judge properly having considered the principles distilled to mental health cases and Article 3 by applying MY (suicide risk after Paposhvilli) [2022] UKUT 00232 at [88] to [90].

20. Again more generally, it is argued that weight is a matter for the judicial fact-finder. Unless the appellant can argue that the judge's analysis is unreasonable, the ground amounts to no more than a disagreement and must be rejected.

21. Returning to ground 2, the respondent says that the judge's reasoning at [63] to [74] is consistent with Kamara v SSHD even if it has not specifically been cited. The evidence put forward by the appellant – unchallenged by the respondent –

does not taken at its height evidence an inability to form friendships that may help him seek available medical help in India.

Submissions

22. Amplifying his arguments in his grounds of appeal and skeleton dated 16 September 2024 (themselves amplifying his skeleton dated 09 May 2024, also before us, prepared for the decision being appealed), Mr Turner submits that his case turns on the judge having failed to consider the medical evidence. The appellant has, says Mr Turner, severe mental issues including suicidal ideation. This is not just evidenced in Dr D'Agnone's report, but also other medical services. If the judge had, as he says at [69], really considered the medical evidence *"holistically"*, he could not rationally have come to the conclusions that he did.

23. Mr Turner draws our attention to the appellant's GP notes on 30 August 2023, where it is recorded that *"over the last 2/52, suicidal thoughts were experienced nearly every day"*. The entry for the next day records *"self harm – punching wall, hitting things, felt like this yesterday"*. We note that at paragraph 9.4 of Dr D'Agnone's report, it states: *"Mr Veeravelly reported past suicidal ideation and self-harm. He claims to have cut his wrists in the past, slapped himself and hit his head against a wall during bouts of anger and frustration"*.

24. Ms Cunha relies on her rule 24 response. She says that the judge's conclusions as to the medical evidence were clearly argued and available to him. She concedes that the evidence Mr Turner points to that post-dates September 2023 appears not to have been considered by the judge, but there is nothing of relevance therein that could lead to a material error of law by virtue of its not being considered. There is simply nothing in the medical evidence that could constitute a breach of Article 3.

Decision

25. Mr Turner has framed his case as turning on the medical evidence. We therefore begin by surveying it.

26. We note that where Mr Turner draws our attention to the entry of 31 August 2023 mentioning self-harm, in the same entry the appellant *"denies any thoughts of suicide – no active plans"*, despite the previous day having described ideation nearly every day. We see that the appellant's GP records on 28 April 2022 record that he *"denies thoughts of self harm/suicide*.

27. Having looked further at the appellant's GP records, the only other entry that we can find where the appellant reports either self-harm or suicide ideation is that of 6 August 2021, where the appellant says *"Had a deflating message from the Home Office...He felt suicidal at the instant, and was spinning. He feels tired and exhausted from this long back and forth ordeal...He denies feeling suicidal or having intentions/plans"*. The appellant also said that he did not want any intervention from the clinical practitioner on that day. By contrast, suicidal ideation and ideation of intentional self-harm are denied by the appellant on nine occasions, being 24 August 2020, 19 September 2020, 23 November 2020, 4 January 2021, 20 January 2021, 23 June 2021, 2 July 2021, 7 July 2021 and 4 January 2022. We also note that as the judge specifically states at [68] that he considered GP records up to up to September 2023, he can be taken to have considered all of these entries.

28. We now turn to the post-September 2023 evidence that Mr Turner specifically relies upon. The letter from The Listening Place dated 8 February 2024 confirms that the appellant has been referred to them; that The Listening Place specialises in supporting suicidal people; and that the appellant commenced fortnightly sessions on 29 December 2023. However, it provides no further information as to how the appellant has engaged with The Listening Place, whether he needs to, or even whether, as of the date of the First-tier Tribunal hearing, he was still attending appointments. Mr Turner referred next to the Community Living Well letter of 10 January 2024. That letter records, in bold, the following summary: *"Risk: has some thoughts that life is not worth living, denied acting on these thoughts, denied having intentions to self-harm. He has been with listening service to find reasons to stay alive"*. This chimes with the GP records. This Community Living Well letter reports that the referral within their service is to the *"Low Intensity CBT Group"*. While Mr Turner submits that nothing turns on whether the intensity of the support offered is low or high, we must disagree. It is the appellant who seeks to argue that he is very vulnerable; and that he needs support that will not be accessible to him in India. That the level of support Community Living Well assesses the appellant as needing is "*low*" is plainly relevant to both points. In any event, the evidence post-daring September 2023 that Mr Turner relies upon also does not support the conclusion that the appellant had a sustained desire to harm himself.

29. Dr D'Agnone addresses the issue in his report at paragraph 10.17, where he records that *"Mr Veeravelly denied any current plans to commit suicide, but he has had periods in the past where he has had suicide ideation"*. Taking the GP records at face value, there was a fortnight period in August 2021 where the appellant did have suicide and self-harming ideation. Taking the appellant's medical evidence at its height, there was nothing before the First-tier Tribunal to suggest that the appellant remained suicidal at the date of the hearing. Whilst, as we have already observed, Dr D'Agnone records that the appellant reports that he has harmed himself in the past, there is no indication of when or how often this has been.

30. Turning specifically to Dr D'Agnone's report, we consider that it was well within the judge's discretion to place limited weight on it. Reading through section 11, the "opinions and recommendations" of the report, the judge was entitled to find at [67] that Dr D'Agnone appears to have taken the appellant's assertions at face value. We quote paragraph 11.15 as an example:

> "Mr Veeravelly claims that healthcare in India is very expensive compared to the United Kingdom. He will not be able to settle his debts or afford treatment for his medical conditions."

31. While Dr D'Agnone confirms that he has read, among other documents, the appellant's medical records, he also states at paragraph 5.1 that *"I have considered what Mr Veeravelly has told me as 'assumed facts'"*. Where the appellant's assertions are unsupported by medical evidence, it is open to the judge to consider their veracity independently of the opinion of the medical expert. Here, however, the issue is not merely whether the appellant's account is to be considered truthful or self-serving, but whether what the appellant has said is sufficient, even if everything he says is accurate, to establish his claim. The appellant has asserted that he has felt suicidal and harmed himself; but supplied hardly any detail to Dr D'Agnone beyond that we have already quoted, nor any timeframe for these episodes. His witness statement dated 2 February

2024 is similarly laconic, stating at paragraph 15 *"I feel that if I were made to return, my only option would be to end my life there…I truly believe that I would not have survived the past 13 years if it were not for them"*. The appellant does not expand upon this at all. Mr Turner has not sought to suggest that any information has gone unrecorded by Dr D'Agnone; indeed, he described it in his submissions as a *"proper report".* In the round, and taking into account that the report was more than two years old when the judge considered it, we do not find that the judge was bound to have followed the recommendation set out in Dr D'Agnone's report.

32. We now turn to ground 1. The respondent does not seek to argue that the judge considered The Listening Place and Community Living Well letters referred to above. These post-date September 2023 and, as the judge has stated that he considered nothing after that date, it follows that the judge did not look at them. The question is whether this omission amounts to a material error of law.

33. We find, for the reasons give above, that it does not. These letters do not evidence that the appellant is at a higher risk of harm than that which the judge assessed him to be at at [69]; or that he needs support above and beyond that assessed by the judge such as would invalidate the judge's finding at [72] that the necessary support is available in India.

34. Finally, we agree with the respondent that while the judge did not make reference to JL (medical reports-credibility) China, the judge was plainly alive at [67] to the difficulty of Dr D'Agnone's apparently unquestioning reliance on the appellant's account of his medical issues. Headnote 4 of JL is clear that the correct approach, where over-reliance is placed on the account of the person concerned, is not to reject the report's status as independent evidence, but to consider the extent to which – if at all – the weight given to it is reduced. The judge's reasons are terse here, but that is plainly the approach he took.

35. We have already explained our reasons for agreeing that the judge was entitled to place limited weight on Dr D'Agnone's report. We agree with the respondent that the judge was entitled to survey the GP records as he did. Indeed, having decided to place limited weight on the report, we consider that the judge was reasonably entitled to do so. We find that ground 1 is not made out.

36. As regards ground 2, the judge has applied the very significant obstacles test per paragraph 276ADE(1)(vi) of the Immigration Rules at [53] and [79].

37. For the reasons that we did not consider ground 1 to be made out, we are satisfied that the judge was entitled to find that the medical evidence the appellant presented to the tribunal failed to demonstrate that his health would present a very significant obstacle to return. The judge accepted at [69] that the appellant suffered from mental health issues and noted at [68] the medication that the appellant takes. However, the judge, having summarised his findings regarding the medical evidence at [64] to [67], was reasonably entitled to conclude at [87] to [90] that the appellant could obtain appropriate medication in India. The judge was entitled to consider the UK Home Office, Country Information Note - India: Medical and healthcare provision (April 2023). That Note explained, as quoted in the decision at [70] and [71], that while the mental health workforce faces *"major shortages"*, there are mental health helplines and services provided by NGOs. The judge quoted some services at [71] that are said to be subsidised or free of charge. The appellant did not seek to qualify this

information, even though it contradicts his broad assertion to Dr D'Agnone that healthcare in India is very expensive compared with the UK.

38. Secondly, the judge noted at [75] that the appellant had previously claimed to have friends in India. He that finds at [91]:

> "The appellant has previously explained that he has friends in India. I find that his friends in India will be able to assist him in reintegrating back in India."

39. The judge's findings as to the appellant's medical needs impact on the level of support he needs from his friends in India. The judge found that his health did not preclude a return to India, as appropriate treatment would be available to him. It was therefore open to the judge to conclude that his friends would be able to assist him in reintegrating: there are no particular issues that would be beyond the appellant's friends' abilities to assist him. We agree with Ms Cunha that the evidence put forward by the appellant does not, taken at its height evidence, an inability to form friendships that may help him seek available medical help in India; as such, it is irrelevant that he was not challenged on it. We find that ground 2 is not made out.

40. As regards ground 3, the judge, citing MY (suicide risk after Paposhvilli), correctly identified at [88] and [89] that the burden is on the appellant to demonstrate that there are substantial grounds for believing that there would be substantial grounds for believing the appellant would face a real risk of being exposed to serious, rapid and irreversible decline in their state of health resulting from intense suffering; or a significant reduction in life expectancy as a result of appropriate medical treatment or lack of access to such treatment. For the reasons we have given above, we cannot see that the appellant came anywhere near the level of establishing this. While the judge has not referenced AM (Article 3, health cases) Zimbabwe [2022] UKUT 131 (IAC), the judge's consideration of the medical evidence at [63] to [74] is plainly in line with its guidance. The appellant argues that the judge should have placed more weight on his mental health issues, his closeness to his UK friends, his lack of ties with India and the stigma attached to his mental health should he return. We cannot see that the last of these points was addressed in the skeleton put before the judge. In any event, the judge has considered the appellant's mental health as we have set out above; and has also adequately considered the other matters on which the appellant says should have been accorded greater importance.

41. As for Article 8 ECHR, the judge correctly identified at [42] and [43] that it is for the appellant on the balance of probabilities to establish the factual grounds on which he says that Article 8(1) is engaged and, if he does so, to demonstrate that the interference to the appellant's right to family life is justified under Article 8(2). The judge has referenced the factors set out in section 117B of the Nationality, Immigration and Asylum Act 2002 as well as the five-stage text set out in R (Razgar) v SSHD [2004] UKHL 27. The judge came to the conclusion that, for the purposes of Article 8(2), the interference occasioned by the appellant's removal from the UK would be proportionate. For the reasons we have given above in respect of grounds 1 and 2, we cannot find an error of law in his approach under ground 3, either.

Notice of Decision

We are not satisfied that the decision involved an error of law. It follows that we dismiss the appeal. The decision of Judge Howard stands.

D. Merrigan

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 January 2025