



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2024-004639

First-tier Tribunal No:
HU/57753/2023
LH/00674/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

22nd January 2025

Before

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE SWANEY**

Between

**MA
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms H Gilmour, senior presenting officer

For the Respondent: Mr R Shea, counsel, instructed by Solicitors Inn

Heard at Field House on 15 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. The appellant is a national of Pakistan who arrived in the United Kingdom on 18 March 2010. He applied for leave to remain as a student on 21 April 2011. He was granted leave to remain valid until 30 August 2014.
2. On 12 June 2013 his leave to remain was curtailed so as to expire on 12 August 2013. The appellant made an in-time application for further leave to remain as a student, which was refused on 26 February 2014. The appellant appealed the decision. His appeal was dismissed in a determination promulgated on 4 July 2014. His application for permission to appeal to the Upper Tribunal was refused and his appeal rights are recorded as having been exhausted on 8 January 2015.
3. The appellant claimed asylum on 4 June 2018. The claim was refused on 3 December 2018. It does not appear that the appellant appealed that decision. On 16 August 2021 he made further submissions which were refused on 12 September 2022.
4. On 6 December 2022 the appellant made further submissions on protection and human rights grounds. It is the refusal of those submissions which resulted in the appeal which is the subject of these proceedings.
5. In a decision promulgated on 25 July 2024 Judge S J Clarke (the Judge) dismissed the appellant's appeal, making the following key findings:
 - (i) The appellant and his partner are married.
 - (ii) The psychiatric report of Dr Sharma carries little weight because of the inconsistent account of the claim given to him by the appellant.
 - (iii) Although no credibility concerns were raised in relation to his claim in 2018, further evidence has subsequently come to light which damage his credibility (i.e. the inconsistent account contained in the psychiatric report).
 - (iv) The appellant does not fear anyone in Pakistan and he fabricated his account as a reason for not returning there.
 - (v) The medical evidence was unchallenged and assesses the risk of suicide as very high.
 - (vi) The risk of suicide is serious and ongoing.
 - (vii) There is no causal link between the risk of suicide and removal because the underlying asylum claim is not objectively or even subjectively well-founded.
 - (viii) Mental health treatment facilities are available in Pakistan and the appellant's wife would be able to help him access them.

- (ix) Because of the severity of his condition he is more likely to receive treatment.
 - (x) The appellant would not face very significant obstacles to his integration in Pakistan because he would have the support of his wife and the wider family.
 - (xi) It is in the best interests of the appellant's children to remain as part of their family unit, wherever that family unit may be.
6. The appellant sought permission to appeal from the First-tier Tribunal, however, this was refused on 24 September 2024 by Judge Seelhoff. The appellant renewed the application and permission to appeal was granted by Upper Tribunal Judge Owens on 12 November 2024.
 7. Two grounds of appeal were pleaded. The first was that the Judge failed to give adequate reasons for not considering the appellant's initial asylum claim (i.e. the reasons for claiming asylum advanced in 2018). This ground might more appropriately be expressed as the Judge erred in failing to give adequate reasons for the finding that the appellant was not credible.
 8. The second ground was that the Judge's assessment of article 3 was flawed. This can be broken down into two elements: 1) that the Judge's reasons for finding that there is no causal link between the risk of suicide and removal are irrational and/or inadequate; and 2) that the Judge failed to give adequate reasons for finding that the appellant would be able to access treatment in Pakistan.
 9. Judge Owens granted permission on all grounds. She found that it was arguable that having accepted that the risk of suicide was seriously high, the Judge's reasons for finding no causal link between the risk of suicide and removal were inadequate.
 10. The matter came before us to determine whether the judge's decision contains an error of law.

The hearing

11. The appellant had failed to comply with the direction to file and serve a composite bundle in advance of the hearing. Mr Shea's instructions were that this had in fact been done both in response to the direction and the day before the hearing. He referred to this having been done via MyHMCTS. With respect, this cannot be correct, as MyHMCTS is the case management system used by the First-tier Tribunal. The direction required that the bundle be filed using CE-file, the Upper Tribunal's case management system. There is no record of a composite bundle being uploaded to CE-file in compliance with directions.
12. In light of the non-compliance and the inadequate explanation received from Mr Shea (which we accept was through no fault on his part), we made the following oral directions:

- (1) The relevant caseworker or in default, the principal of Solicitors Inn shall provide a written explanation as to a) whether any composite error of law bundle was ever filed on CE-file and/or served by email on the SoS; and b) if it was filed and served, precisely when this was done.
 - (2) The explanation must be filed with the Upper Tribunal by no later than 5 pm on Friday 17 January 2025 and marked for urgent attention of UT Judge Norton-Taylor.
 - (3) The written explanation must be filed on CE-file and by email to Field House Correspondence inbox.
13. Notwithstanding that directions had not been complied with, Ms Gilmour confirmed that she had been able to access all the relevant document and that she was ready to proceed.
 14. As a preliminary matter we discussed the grounds of appeal and the evidence with the parties. Specifically, we noted the supplementary bundle which was before the Judge and the evidence contained within it, in particular the letter from Bethany Rimmer, a mental health practitioner and email correspondence from Mr Ian Briant, a presenting officer. The relevance of this evidence is that it provided an explanation for the apparently inconsistent accounts given by the appellant to the respondent and to Dr Sharma.
 15. We indicated that our preliminary view was that Mr Briant had requested additional evidence, reviewed the evidence that was provided, and accepted on behalf of the respondent that the evidence demonstrated that the appellant had not in fact given an inconsistent account to Dr Sharma. We noted our view that as the Judge did not make reference to that evidence, it put the sustainability of her findings that the appellant's account was fabricated in doubt.
 16. Ms Gilmour indicated that she had taken the same view of that evidence and agreed that the Judge's findings were not sustainable, particularly in light of her acceptance of the evidence that the appellant was very mentally unwell. Ms Gilmour confirmed that although ground one, which relates to credibility, does not refer to the email of Mr Briant, she accepted that the email was before the Judge.
 17. In respect of ground two, Ms Gilmour accepted that the Judge's error in relation to credibility was also fatal to her findings on causal link.
 18. We noted additional concerns about the findings in paragraph 26 with respect to the availability of treatment in Pakistan and Ms Gilmour said that she had also identified paragraph 26 as being of concern.
 19. In light of Ms Gilmour's very helpful and pragmatic concessions, we confirmed that the Judge's decision contains material errors of law and that it fell to be set aside.

20. In summary, we find that the Judge made the following material errors of law:
- (i) Failing to take account of material evidence, i.e. the supplementary bundle, which included a concession on a material issue. The evidence is referred to by the Judge and we find that it was before her, but she did not take it into account when making her findings on credibility and/or did not give adequate reasons for rejecting it.
 - (ii) Failing to give adequate reasons for her finding that there is no causal link between the risk of suicide and removal.
 - (iii) Failing to give adequate reasons for her findings about the availability of treatment in Pakistan.
21. We indicated that our provisional view, having had regard to paragraph 7.2 of the Practice Directions and what was said by the Court of Appeal in AEB v SSHD [2022], Civ 1512, was that the appeal should be remitted to the First-tier Tribunal for a fresh hearing. We considered that the extent of the fact finding required means that it is appropriate to remit the appeal. Ms Gilmour agreed and there was no objection from Mr Shea on behalf of the appellant.
22. We considered whether any of the Judge's findings ought to be preserved, in particular her finding that the appellant and his partner are in fact married but decided that they should not. Given our conclusion about the Judge's findings on credibility, we considered that none of the findings of fact should stand. It follows that all issues, including article 8 of the ECHR will be live before the First-tier Tribunal.

Notice of Decision

23. The decision of the First-tier Tribunal involve the making of an error of law and that decision is set aside in its entirety.
24. The appeal is remitted to the First-tier Tribunal at Taylor House for a de novo hearing before any judge other than Judge S J Clarke.

J K Swaney

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 January 2025