



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004880

First-tier Tribunal Nos: PA/52205/2023
LP/02020/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 28th of January 2025

Before

UPPER TRIBUNAL JUDGE KHAN
DEPUTY UPPER TRIBUNAL JUDGE SMEATON

Between

CAJ
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Swain of Counsel, instructed by Burney Legal Solicitors

For the Respondent: Ms Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 20 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

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

DECISION AND REASONS

Introduction

1. The appellant appeals with permission the decision of First-Tier Tribunal Judge Abdar ('the judge') dismissing his appeal on protection and human rights grounds.
2. The appellant is a citizen of Pakistan. He entered the UK as a business visitor on 8 April 2009. He overstayed and claimed asylum on 14 March 2018 which was refused by the respondent on 28 March 2023. The appellant appealed the respondent's refusal to accept his protection claim to the First-tier Tribunal. This was dismissed on 10 September 2024. It is this decision that is the subject of the appeal hearing today.
3. The appellant's original claim is that he is entitled to leave to remain based on his protection claim, alternatively under humanitarian protection (paragraph 339C of the Immigration Rules), or human rights grounds based on his private life (paragraph 276ADE(1)(vi) of the Immigration Rules), and under Article 8 (private and family life) of the European Convention on Human Rights (ECHR).

Decision of the First-tier Tribunal

4. The First-tier Tribunal heard evidence from the appellant, his wife ('Mrs SJ') and stepdaughter (Ms 'FR'). The key findings of the judge are to be found at paragraphs [21] to [59] of the determination.
5. In dismissing the appeal, the judge found the appellant's account in relation to the protection claim to be 'incredible' and 'unreliable' [26]. Specifically, at [40] he stated, '*I do find the appellant's very late claim for asylum upon being detained to be a last-ditch effort to remain in the UK; leading to an incredible protection claim and not out of a genuine fear of harm on return to Pakistan.*' In relation to his private life claim within the Immigration rules under paragraph 276ADE(1)(vi), the judge concluded that the appellant did not meet the requirements of the Immigration rules as he would not face very significant obstacles in integrating in Pakistan on return.
6. Finally, in relation to Article 8 ECHR and Gen. 3.1 to 3.2. of the Immigration Rules, the judge stated at [49] that although he found the appellant and Mrs SJ to be partners and to share a family life together, the appellant could not meet the requirements of the rules as a spouse or a partner because he did not have the necessary immigration status. On the totality of the evidence, the judge considered the removal of the appellant would not result in unjustifiably harsh consequences for the appellant or Mrs SJ or any other members of the family and therefore the respondent's refusal of the appellant's human rights claim was proportionate, and was not in breach of Article 8 ECHR.
7. It is against this background that the appellant appealed to the Upper Tribunal.

Grounds of Appeal

8. The original grounds of appeal were three-fold: (a) that the judge erred in failing to assess whether the appellant met EX.1(b) of the Immigration Rules and whether there are insurmountable obstacles to the appellant continuing family life with his partner in the UK; (b) the judge's approach to Article 8 outside the rules was seriously defective by failing to sufficiently consider Mrs SJ's own

private and family life in the UK; and, (c) the judge's consideration of the human rights claim was otherwise defective by failing to give due weight to the expert medical evidence and to consider how the appellant's mental health could impact his ability to integrate into Pakistan after a 15 year absence.

9. On 12 November 2024, Upper Tribunal Judge Hirst granted permission to appeal on all grounds.

Rule 24

10. The respondent did not file a Rule 24 response.
11. At the hearing, Mr Swain, on behalf of the appellant, formally withdrew ground (a) of the permitted grounds of appeal. He explained that although he had appeared at the lower level, he was not the author of the grounds of appeal. He now considered it was wrong to criticise the judge for failing to consider Paragraph EX.1(b) of the Immigration Rules when this issue was not amongst those agreed to be in dispute based on his skeleton argument (at paragraph 4). In light of this development, Mr Swain invited the Tribunal to consider only appeal grounds (b) & (c).

Discussion and Analysis

12. We have not set out the submissions of either party. However, our analysis of the case reflects the submissions they made based on grounds (b) & (c).
13. At their core, grounds (b) & (c) seek to criticise the judge's approach when assessing proportionality in respect of the appellant's Article 8 ECHR (private and family life) outside the Immigration rules.
14. It is argued that the judge failed to give anxious and detailed consideration to the situation of the appellant's British citizen wife before finding at [56] that it was an option for Mrs SJ to relocate to Pakistan with the appellant.
15. In this respect, the judge is criticised for failing to take account of Mrs SJ's own private life in the running of her UK business, and her close family life with her two adult sons (who live with her) and her daughter and grandchild. The judge is said to have also failed to consider Mrs SJ's social ties, her ongoing treatment on the NHS and to identify on what basis he found that Mrs SJ's siblings in Pakistan would be able to assist her, such that any expectation of her moving to Pakistan was not proportionate.
16. We note from the decision, the only references to Mrs SJ's private and family life are to be found at paragraphs [56] and [57]. At [56] the judge stated, '*I find it is an option Mrs SJ has, particularly as Mrs SJ's children are adults and Mrs SJ has siblings in Pakistan, who could also assist the appellant and Mrs SJ, both short and long term.*' At [57] he stated '*I accept that the appellant and Mrs SJ also have a close bond with Ms FR's minor children. However, it is not more or less than the bond young children have with their grandparents and the children's best interests will be served by their loving parents.*'
17. In the circumstances, we recall the remarks of Sedley LJ in AB (Jamaica) v SSHD [2007] ECWA 1302 when he stated '*It cannot be permissible to give less than detailed and anxious consideration to the situation of a British citizen who has*

lived here all his life before it is held reasonable and proportionate to expect [her] to emigrate to a foreign country in order to keep [their] marriage intact.'

18. It is clear from the First-tier decision that the judge has failed to demonstrate he has engaged with the relevant evidence which revealed in particular the depth of Mrs SJ's relationships with her children and grandchildren. In this respect, there is no proper consideration of the best interests of the relevant grandchildren in the context of their close relationship with Mrs SJ, with whom they spend their weekends and the impact on them in the event of her relocation. This is relevant to consideration of Section 55 of the Borders, Citizenship and Immigration Act 2009.
19. We accept that the Upper Tribunal should be slow to infer that a relevant point has not been taken into account simply because it is not expressly mentioned by the First-tier Judge: see MA (Somalia) v SSHD [2010] UKSC 49. However, we also consider it is important for the judge to have shown that he gave detailed and anxious consideration to the Mrs SJ's private and family life as a British citizen, which has not been done.
20. For these reasons, we find ground (b) of the appeal made out as a material error of law.
21. Turning to ground (c), the appellant argues that the judge failed to give due weight to the medical report of Dr Latifi and, to consider how the appellant's mental health could impact his ability to integrate into Pakistan after a 15-year absence.
22. We note from Dr Latifi's expert medical report dated 2 May 2024, that he addressed in some considerable detail the importance of the appellant's family life in helping him with his mental health issues and the likely impact of relocation to Pakistan.
23. Dr Latifi opined that disruption to the appellant's current family stability by forcing him to return to Pakistan posed a substantial risk of aggravating his PTSD, depression, and anxiety, which in turn could lead to a significant deterioration in his mental health and overall well-being.
24. We note from the decision at [19] that the judge accepted the expert medical report. He stated, '*The respondent has not challenged Dr Latifi as an expert, and I find Dr Latifi to be a suitably qualified expert, and I find the report to be reliable.*' In this regard, Ms Lecointe, on behalf of the Secretary of State, submitted that given the judge's credibility findings against the appellant, it was possible that he had misled Dr Latifi in his answers. We reject that submission on the basis that the judge states explicitly that he found the expert report to be reliable.
25. We further observe that the judge set out his findings about the medical evidence at paragraphs [16] to [20] of the decision. However, nowhere in the judge's decision is to be found any proper consideration of Dr Latifi's evidence about the importance of the appellant's family life in helping him with his mental health issues and the likely impact of relocation to Pakistan, save for a cursory remark at [43] where he stated '*In my judgment, the appellant may face some difficulties on return to Pakistan after such a long absence and particularly in view of the appellant's medical diagnoses, albeit I have not received any*

evidence or submissions on any lack of the necessary medication or treatment for the appellant in Pakistan. However, on a holistic view and on balance, I am satisfied that the appellant will not face very significant obstacles in integrating into Pakistan on return.'

26. At paragraphs [42] and [56] the judge referred to the appellant's family in Pakistan. He stated that they could support the appellant in integrating into Pakistan. However, he failed to identify any evidence to support these findings.
27. It is clear from the First-tier decision that the judge failed to engage with those aspects of the medical evidence which highlighted the importance of the appellant's family life to his mental health, and the likely impact of separation on him if returned to Pakistan.
28. We accept that the Upper Tribunal should be slow to infer that a relevant point has not been taken into account simply because it is not expressly mentioned by the First-tier Judge: see MA (Somalia) v SSHD [2010] UKSC 49. However, we also consider it is important for the judge to show that he gave proper consideration to the relevant medical evidence in his approach to the Article 8 proportionality exercise, which has not been done.
29. Overall, we find the judge erred by failing to have regard to material evidence and/or giving due weight to relevant evidence relating to the appellant and Mrs SJ's private and family life which may have impacted the Tribunal's approach to the proportionality assessment under Article 8 ECHR.
30. For these reasons, we find appeal ground (c) is made out and amounts to a material error of law.
31. For the reasons mentioned, we allow the appeal on both grounds and set aside the First-tier decision of Judge Abdar. Given the nature of the errors of law, we are satisfied this matter should be remitted to the First-tier Tribunal. No findings are preserved in relation to the human rights claims.

Notice of the decision

32. The decision of the First-tier Tribunal Judge involved the making of two material errors of law and is set aside. The case is remitted to the first-tier Tribunal to be heard afresh in relation to the human rights claims only.

K.A.Khan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 January 2025