



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/21052/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 4 March 2019**

**Decision & Reasons  
Promulgated**

**On 19 March 2019**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**UL HAQ DAR HASEEB  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Iqbal, London View Chambers

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the remaking of the appellant's appeal against the Secretary of State's decision of 17 August 2016 refusing his application for leave to remain and refusing his human rights claim.
2. The appellant's appeal against that decision was allowed by a Judge of the First-tier Tribunal, but subsequently after a hearing on 6 June 2018 I found errors of law in the judge's decision and directed that it be reheard.
3. The appellant had been in the United Kingdom since June 2013 as a Tier 1 Dependant of his father. On 23 June 2014 he made an application as a

Tier 1 Dependant over the age of 18 years. He was refused indefinite leave to remain on 25 January 2016 because he had a police caution for battery, arising out of a domestic incident involving pushing at his home. The refusal of indefinite leave to remain was because the caution was within the two year cautionary period. This was a mandatory refusal under paragraph 322(9) of HC 395.

4. The appellant is currently a third year law student at Queen Mary University in London. There is also an issue as to problems with his sight.
5. There is a letter from the consultant ophthalmologist Mr Hakim of 29 September 2018 which in summary says that the appellant is at risk of acute narrow angle glaucoma and should have laser iridotomies for which he had an appointment in October 2018.
6. In a subsequent letter from Mr Hakim dated 25<sup>th</sup> February 2019, he noted that the iridotomies had been undertaken at Moorfields Eye Hospital and the hospital had made special contact lenses for the appellant and he had additional reading glasses. Mr Hakim said that the appellant's eyes are very unusual in that he has extreme hyperopia predisposing him to a number of sight threatening risks which are appropriately being monitored at Moorfields Eye Hospital. It is said that he needs continual care which is almost certainly not available in his home country.
7. There is also a letter from Ian Sexton of Vision Express who had been consulted by the appellant since August 2016. He says that the appellant has significant visual problems being a very high powered hypermetrope who struggles to maintain good vision and his spectacles. Mr Sexton had fitted the appellant with a very special large diameter scleral lens which enables him to achieve excellent vision for both distance and near. He says that he has a difficulty reading with spectacles due to the increased thickness of his particular prescription and that the lenses are only available in Europe or the United States and there are very few specialised opticians who can fit these lenses. Without them the appellant would be unable to function on a day-to-day basis.
8. There is also a letter from a Dr Diyal of the Department of Ophthalmology College in Sialkot, Pakistan. He stated that the appellant has an extremely unusual eye prescription and due to this he will always be at a very high risk of developing problems with eyesight including night blindness and glaucoma which could lead to full blindness. He says that despite the initial success the operation at Moorfields last autumn it is vital that the appellant stays under the radar at Moorfields for some period as complications can arise some time after the procedure and it is important for him to return to all his follow-up appointments at Moorfields which usually lasts for a few years. Despite the surgery the appellant would still be at high risk of developing glaucoma due to his extremely small eyeballs.
9. The recommendation for someone who suffers from such severe farsightedness of the appellant is to use contact lenses. It is said that the

appellant's case is quite complicated in comparison to the position of normal contact lens wearers as he has a very high prescription, small eyeballs and unusually shaped natural eye lenses. Dr Diyal says that it is incredibly hard to find the correct contact lenses for the appellant. The appellant had told him that he had tried to get contact lenses in Pakistan before he moved to the United Kingdom, but he could not find any lenses suiting his eyes. Dr Diyal goes on to say that although they do treat patients having a refractive error of up to +20D, the appellant's case is different given his extremely high prescription of very small eyeballs and unusually shaped natural eye lenses. He says that because of the complications present in the appellant's eye condition it is important for him to get his treatment from the United Kingdom.

10. In essence on the basis of his evidence Mr Iqbal argued that the appellant should succeed under the Immigration Rules on the basis of showing very significant obstacles to integration into Pakistan or alternatively outside the Rules on the basis of compelling circumstances.
11. Mr Avery argued that there was no real evidence as to an inability to integrate into Pakistan, and the medical evidence was not such as to show that the compelling circumstances test was met. It was unclear what was meant by the fitting issue as lenses were designed for him and he could order them from outside the United Kingdom and he could apply for entry clearance to come back for treatment. There was no evidence of any follow-up beyond the appointment last autumn.

## **Discussion**

12. But for the caution for battery it would seem clear that the appellant would probably have succeeded in the application for indefinite leave to remain. There is of course no room for a near miss, and as a consequence he finds himself having to put a claim forward on a human rights basis in particular arguing that he has a close family life with his family in the United Kingdom and, the matter of particular force, that he has a private life meriting protection on the basis of the unusual and problematic eye difficulties which he experiences and the potential benefits to the United Kingdom of his abilities as a graduate as it is hoped he will be soon, from a distinguished law school in the United Kingdom.
13. It is a difficult balance, but I am persuaded on the balance that the appellant has shown there are very significant obstacles to his integration into Pakistan. This is on the basis of the medical evidence which I have set out in some detail above. It is clear that the recommendations are that he should remain under the care of Moorfields for the foreseeable future and that there will be significant difficulties for him in coping with the eye problems that he has in light of the more limited availability of treatment in Pakistan. I think it is relevant also to note the judge's finding that there were more than normal emotional ties between the family members. I also consider that at the stage which the appellant's studies now are, it would not be proportionate for him to be expected either to return to Pakistan to complete his studies or apply for entry clearance to do so. I

consider that on balance there have been shown to be compelling circumstances which outweigh the public interest in the appellant's removal in this case, and as such I conclude not only does he succeed under the Rules but if it were necessary to do so I would find that he succeeds outside the Rules on the basis of compelling circumstances justifying a decision in his favour in that regard. Accordingly the appellant's appeal against the Secretary of State's decision is allowed.

**Notice of Decision**

The appeal is allowed on human rights grounds.

No anonymity direction is made.



Signed

Date 14 March 2019

Upper Tribunal Judge Allen