Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-000567
[HU/51202/2021] [IA/03826/2021]

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 27 September 2022	**On 13 November 2022**

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MR. MOHAMMAD SHARIF
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. A. Alam, Counsel instructed by Syeds Solicitors
For the Respondent: Mr. C. Williams, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. he Appellant appealed against a decision of First-tier Tribunal Judge Hawden-Beal, heard on 1 February 2022, in which she dismissed the Appellant's appeal against the Respondent's decision to refuse further leave to remain in the United Kingdom on the basis of his private life.

2. Permission to appeal was granted by First-tier Tribunal Judge Connal on 14 March 2022 as follows:

> "The grounds are not numbered, but in summary assert that the Judge erred in: (i) failing to make any clear credibility findings in respect of the evidence of the appellant and the witnesses, in particular regarding the appellant's daughter's evidence regarding the appellant only responding to the prompts of his daughter to take his medication; (ii) applying the definition provided by the respondent as opposed to a rounded assessment of whether the appellant would be able to integrate into Pakistan given his circumstances; (iii) failing to take into account factors weighing in favour of the appellant in her assessment of whether it was proportionate for the appellant to be removed; and (iv) failing to give weight to the report of Dr Hashmi as a result of matters which were not put to the appellant in court.
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> In relation to Grounds 3 and 4, it is arguable that the Judge erred in failing to take into account factors weighing in favour of the Appellant, including in considering the report of Dr Hashmi and the evidence of the appellant's daughters regarding the appellant's medical needs, in her consideration of whether the respondent's decision was a proportionate one. Whilst less persuasive, the other grounds are also arguable. Permission to appeal is granted on all grounds."

The hearing

3. We heard oral submissions from both representatives. We reserved our decision.

Error of law

Ground 1

4. It was asserted that the Judge had failed to make any clear credibility findings in respect of the evidence of the Appellant and the witnesses, with particular reference to the Appellant's daughter's evidence that the Appellant would only take medication when it was offered by her. The Judge set out this evidence at [18] of the decision as follows:

> "If she did not care for him, it would finish him off. He cannot be left alone. She said that if he goes back, he will be in danger from the village because he supported her and they will not support him. He does not trust anyone and only takes food and medication from the family and so will not react well to care coming from anyone but family."

5. Mr. Alam submitted that this had not been considered at all in the Judge's assessment of the evidence and it was material to the assessment of whether there would be adequate care in Pakistan. In response Mr. Williams accepted that there was no single sentence in the decision which stated whether or not the Judge found the Appellant and the witnesses to be credible. However, he submitted that the Judge had considered the evidence holistically. In any event in relation to this particular part of the evidence it made no material difference to the outcome, given the law.

6. We find that while the Judge did not make any specific finding as to the credibility of the evidence of the Appellant and his daughters she did not

reject their evidence. We do not accept Mr. Alam's submission that, if the Judge had accepted the evidence that the Appellant would not accept medication offered by anyone but his daughter, she should have found that adequate care would not be available in Pakistan. We find that this is not made out as the test as to whether or not the care is adequate must be an objective one, with reference to the case of MS Malaysia [2019] EWCA Civ 580, in particular [37] to [41]. We find that the Appellant's daughter's evidence regarding medication could not have made a material difference to the Judge's consideration of whether adequate care was available in Pakistan.

7. The Judge found that the Appellant had not shown that adequate care would not be available in Pakistan. At [46] she states:

> "There is no evidence before me to indicate that assistance by way of a carer would not be available to him or that his family in the UK would not be able to afford such care."

8. We find that even though the Judge did not refer to the evidence that the Appellant would not accept his medication from anyone but his daughter this evidence would not have made a material difference. The Appellant had not shown that such care and assistance would not be available.

9. We find that Ground 1 identifies no material error of law.

Ground 2

10. It was submitted that it appeared that the Judge "has applied the definition provided by the Respondent as opposed to a rounded assessment of whether the Appellant would be able to integrate into Pakistan given his circumstances". At [45] of her decision the Judge states:

> "I have also had regard to the respondent's policy on family and private life and exceptional circumstances as provided by the appellant version 13.0 published in January 2021 at pages 59-61 dealing with the assessment of the very significant obstacles to integration'. Page 60 states A '*very significant obstacle to integration' means something which would prevent or seriously inhibit the applicant from integrating into the country of return. You are looking for more than the usual obstacles which may arise on relocation (such as the need to learn a new language or obtain employment). They are looking to see whether there are 'very significant' obstacles, which is a high threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant. Relevant country information should be referred to when assessing whether there are very significant obstacles to integration. You should consider the specific claim made and the relevant national laws, attitudes and country situation in the relevant country or regions. A very significant obstacle may arise where the applicant would be at a real risk of prosecution or*

> *significant harassment or discrimination as a result of their sexual or political orientation or faith or gender, or where their rights and freedoms would otherwise be so severely restricted as to affect their fundamental rights, and therefore their ability to establish a private life in that country. You should consider whether the applicant has the ability to form an adequate private life by the standards of the country of return – not by UK standards. You will need to consider whether the applicant will be able to establish a private life in respect of all its essential elements, even if, for example, their job, or their ability to find work, or their network of friends and relationships may be differently constituted in the country of return. The fact the applicant may find life difficult or challenging in the country of return does not mean that they have established that there would be very significant obstacles to integration there. You must consider all relevant factors in the person's background and the conditions they are likely to face in the country of return in making their decision as to whether there are very significant obstacles to integration."*

11. First we find, as submitted by Mr. Williams, that there is nothing legally flawed in the Respondent's guidance as set out here. He submitted that it was broadly in line with Kamara [2016] EWCA Civ 813. We further find that the Judge's assessment was not based only on this guidance. Earlier in her decision the Judge set out what her assessment should entail. At [42] she states:

> "The question for me is whether, given his current state of health, will he have a capacity to participate in it such that he would be able to build up a variety of human relationships to give substance to his family and/or private life and be able to operate on a day-to-day basis?"

12. There is no error in this statement at [42]. We find that the Judge then proceeded to follow this when she assessed the Appellant's circumstances. We find that she has considered the Appellant's position holistically. We find that there is no error of law in her assessment of the Appellant's position under paragraph 276ADE(1)(vi).

Ground 3

13. It was submitted in the grounds that the Judge failed to take into account factors weighing in favour of the Appellant in her assessment of whether it was proportionate for him to be removed. We were referred to [50] onwards of her decision. Mr. Alam further submitted that the Judge had failed to take into account how long the Appellant had been in the United Kingdom, and that prior to that he had been living in Saudi Arabia for a considerable period of time. She had also failed to take into account his mental health and the fact that he had no relationship with his family members in Pakistan.

14. In response Mr. Williams submitted that the Judge had found that there were no factors in favour of the Appellant. She had considered the public interest at [50]. She found that there were no factors in the Appellant's

favour with relation to the matters to be considered under sections 117B(2) and 117B(3) at [52]. She had correctly found that little weight should be given to his private life with reference to 117B(4). At [53] she considered his family life, and did not err in her finding that it did not constitute an exceptional circumstance.

15. We find that this ground is not made out. At [52] the Judge states:

> "I have considered section 117B and note that the appellant does not speak English. I cannot be satisfied that he has not been a burden upon the public purse because, albeit that he has been supported by his family since 2018 and says that he was working for 4-5 years before being signed off by his GP in February 2020, there is no evidence before me as to how he was supported between 2006 and 2018 and in any event has had accessed the NHS without charge when he was not entitled to. I note that section 117B(5) of the 2002 NIA makes it clear that little weight should be placed upon a private life established when a person's status was precarious. The appellant's status was and still is precarious because his ability to remain in the UK legally has always been dependent upon another grant of leave to remain. Since 2006 he has been an overstayer and, I am satisfied, has never had permission to take up employment, let alone stay here and in that regard, I do place little weight upon his private life."

16. These factors all weigh against the Appellant as properly considered under section 117B. At [53] the Judge went on to consider whether the decision was proportionate.

> "[….] there is nothing exceptional in the appellant's circumstances because there is no evidence before me to suggest that refusing leave to remain would have unjustifiably harsh consequences for the appellant or another member of his family such that the refusal would not be proportionate. His family life with his daughters and their families has been established when he had no right to be here. He has made several applications to stay over the years, all of which have been unsuccessful and he has made no attempt to leave even when he has been served with liability to removal notices and was still in good health and had good relationships with his family in Pakistan. He may well have a good relationship with his grandchildren, but he is not their primary carer and there is no evidence to suggest that they are dependent upon him. Their parents remain responsible for them and it is in their best interests to remain with their parents here and his removal will not affect their status here in the UK. His family have known from the start that he had no permission to stay here and that there may come a time when he had to go back."

17. We find that, considering the Judge's findings as a whole, she has taken into account all of the relevant aspects. We find that there were no positive factors which could have outweighed the factors on the Respondent's side of the balance. The Judge considered the amount of time the Appellant had spent in the United Kingdom when considering section 117B(4) and found correctly that it attracted little weight due to the fact that he had either had limited or no leave.

18. It had not been shown objectively that there was no adequate care for the Appellant in Pakistan. The Judge had no evidence before her to make such a finding. As we have set out in relation to Ground 1, the Appellant's daughter's evidence relating to the Appellant's unwillingness to take medication from anyone else did not show that there was a lack of adequate care in Pakistan. Therefore the Appellant had not shown that there would be a deterioration in his mental health were he to return to Pakistan. We find that the Judge did not err by not giving weight to the time spent by the Appellant in Saudi Arabia given that she had found that she did not have evidence before her to show that he would not be able to integrate into Pakistan. We find that Ground 3 does not identify a material error of law.

Ground 4

19. The final ground of appeal is that the Judge had erred in failing to give weight to the report of Dr. Hashmi due to matters which were not put to the Appellant at the hearing. Mr. Alam further submitted that Dr. Hashmi's report stated that the Appellant's emotional health would deteriorate without family support and that no adverse findings had been made on that point. Mr. Williams submitted in response that the Judge had not erred in her consideration of this evidence. She had concerns about the expert report, and was entitled to attach less weight to it.

20. We have considered the Judge's treatment of the report at [42] to [44]. She states:

> "42. The psychiatric report from Dr Hashmi is dated about 7 weeks before the application was made and states that in assessing him, he saw him once in October 2020 and has referred to relevant documents about his mental health, including his GP notes and specialist hospital letters. There are no details as to what specialist hospital letters were referred to or what the conditions the specialist hospital treated and so I have no idea to what documents Dr Hashmi made reference when examining the appellant. Dr Hashmi has diagnosed the appellant with a depressive disorder, with a current episode of moderate depressions and an anxiety disorder with a mainly impaired attention span and short-term memory tasks based on 25/30 in a Mini Mental State Examination. Nowhere does Dr Hashmi set out what questions were asked in this Mini Mental State Examination which gave rise to this score. I also note that he refers to the appellant having Ischaemic heart disease and low back pain. He recommends that the appellant is followed up by the NHS addressing his Anxiety and Depression; that his psychotropic medication needs to be looked at by a referral to the local community mental health team and he should be referred to psychology services for psychotherapy for his anxiety and depression.
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> 43. I have looked at the appellant's GP notes submitted with the application and which were printed out on December 29th, 2020. The appellant registered with that surgery in March 2019 and his active conditions are noted to be Essential Hypertension which is monitored and pre-Diabetes. There is no significant or a minor past. His

> screening blood tests from April 2019 revealed that his cholesterol was high as was his blood pressure. He was prescribed Losartan and Furosemide for his blood pressure but in May 2019 the diuretic (Furosemide) was replaced by Amlodipine. His Echocardiogram (ECG) in May 2019 was normal. He was prescribed Atorvastatin for his cholesterol and, in October 2020, because he had not been sleeping, he was prescribed a low dose of Zopiclone. In February 2020 he was signed off sick from his work by his GP because of headaches and an inability to concentrate. There is no mention in the GP notes of any heart disease, Ischaemic or otherwise and his pulse when checked at the same time as his blood pressure, was regular and the pulse character was normal. There is also no mention of the appellant going to see his GP because of any low back pain. Albeit that the psychiatric report is dated November 2020, he was seen in October and as of December 29th, 2020, there is no mention of any psychiatric report being seen by the GP or any of the recommendations made by Dr Hashmi being notified to the GP or of any mental health issues being raised with the GP or being acted on by way of referral to mental health services.
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> 44. Given the omission in the report as to the evidence from the GP which was seen, the lack of information as to the contents of the Mini Mental State Examination and the discrepancies between it and the GP notes, the weight I place upon the report and its conclusions is less than it might otherwise have been if that information had been included."

21. The Judge states at [42] that she did not know what documents had been considered by Dr. Hashmi when he prepared his report. Given Dr. Hashmi's statement that the Appellant was suffering from ischaemic heart disease and low back pain, but that the Judge found no reference to either of these in the GP notes, we find that she was entitled to conclude that these discrepancies meant that less weight could be attached to Dr. Hashmi's report. While we are not persuaded that it was necessary for Dr. Hashmi to set out the questions he asked as part of the Mini MSE, the Judge was entitled to attach weight to the discrepancies between the report and the GP notes. It is clear from [43] that the Judge carefully examined the GP notes. It was not submitted that there was any error in her findings at [43].

22. The fact that the Respondent did not take issue with the expert report does not mean that the Judge had to accept it in its entirety. It was incumbent on her to carry out a full assessment of the report alongside the rest of the medical evidence. It was for her to decide the weight to be attached to the report, and there is no material error of law in her consideration of it.

Notice of Decision

1. The decision of the First-tier Tribunal does not involve the making of a material error of law.

2. The decision of the First-tier Tribunal stands.

3. No anonymity direction is made.

Signed

Date 3 October 2022

Kate Chamberlain

Deputy Upper Tribunal Judge Chamberlain