



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal No: **UI-2022-004584**
(FtT no: HU/54599/2021); LH/00301/2022

THE IMMIGRATION ACTS

Heard at Field House, London
On 1 February 2023

Decision & Reasons Promulgated
On 27 March 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RAVAID KHAN

Respondent

*For the Appellant, Mr S Whitwell, Senior Home Office Presenting Officer,
attending remotely*

For the Respondent, Mr C Talacchi, instructed by Archbold Solicitors Ltd

DECISION AND REASONS

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. In his decision promulgated dated 9 August 2022, FtT Judge Beg held at [22] that in terms of private life:

... the appellant fails to meet the requirements of paragraph 276 ADE (1) (vi) of the immigration rules.

At [67], the Judge held that his case on medical grounds did not:

... reach the high threshold of article 3.

and continued:

However, I find that any interference in the appellant's private life rights will be disproportionate and will result in unjustifiably harsh consequences.

Notice of decision.

The immigration appeal is dismissed.

The human rights appeal (article 3) is dismissed.

The human rights appeal (article 8) is allowed.

3. The SSHD applied for permission to appeal to the UT. The grounds may be taken as summarised in the grant of permission by FtT Judge Hatton dated 26 September 2022: ...

2. The grounds assert the Judge erred due to (i) making a material error of law and (ii) providing inadequate reasons for findings.

3. In respect of the first ground, I accept that given the Judge found at [58] that little weight should be attached to the Appellant's private life in the UK, it is arguably incongruous that the Judge subsequently found his appeal was capable of succeeding on Article 8 grounds based solely upon his private life [67], especially given the Judge's preceding finding at [22] that the Appellant was incapable of demonstrating there were very significant obstacles preventing him from returning to his country of origin within the meaning of paragraph 276ADE(1)(vi) of the Immigration Rules.

4. In respect of the second ground, I correspondingly accept it is arguably incongruous that the Judge concluded at [65] there was a risk of the Appellant being exposed to a serious, rapid and irreversible decline in his health resulting in intense suffering, having previously found the Appellant's circumstances revealed no very significant obstacles to him returning to Pakistan ... especially because the Judge subsequently found at [67] that the Appellant's situation did not engage Article 3. In turn, I consider that the Judge's conclusion at [65] is arguably at odds with their preceding findings that the Appellant will have a home to return to and a family who will support him [21], that he can work in Pakistan and has a large number of relatives who will be able to provide him with a network of support [22], that the medical evidence confirms psoriasis medications in Pakistan "are all available at a cost" [37], that there is no evidence to support a conclusion that psoriasis could become worse in Pakistan on account of the warm climate [44] and that appropriate medical treatment is available in Islamabad [64].

4. The principal points which I noted from Mr Whitwell were:

(i) The decision was "generally all over the place".

- (ii) There was no evidence by which it could rationally have been held that the appellant's condition, large plaque psoriasis, met the test for an article 3 case on medical grounds.
- (iii) Nevertheless, the FtT said at [65] that he would be "exposed to a serious, rapid and irreversible decline ... resulting in intense suffering".
- (iv) That read as if the appeal was to be allowed under article 3, but the decision then veered off at [67] to say that the high threshold of article 3 was not reached; which was accurate.
- (v) The Judge at [58] attached little weight to private life established without status, and at [59] found years of NHS treatment, lack of financial independence, and inability to speak English to be further adverse in terms of section 117B of the 2002 Act.
- (vi) Drawing those matters together, there was nothing in the decision to explain to the respondent why the appeal had been allowed on private life grounds.
- (vii) The decision should be set aside.
- (viii) The appellant tendered no further evidence. On the case put before the tribunal, the outcome should be reversed.

5. Mr Talacchi submitted:

- (i) The FtT grappled with the essential issue - the appellant's skin condition, its progression, availability of treatment in the UK but not in Pakistan.
- (ii) The appellant gave evidence, recorded at [30 -33], of how his condition worsened, and of non-availability of treatment in his home area of Pakistan, which was at the heart of the decision.
- (iii) The respondent had input on affordability of treatment and referred to evidence which tended to show it would be "very expensive" and not available in the appellant's area - see [53]. The respondent had an obligation to bring such evidence. There was no evidence of cheaper alternatives.
- (iv) The Judge accepted that evidence at [60] and proceeded up to [67] to base his proportionality assessment on a lifelong progressive condition, controlled by treatment in the UK, but for which treatment would be unaffordable in Pakistan.
- (v) Cost was a central issue.

- (vi) It was open to the Judge to allow the appeal on a proportionality basis despite giving little weight to private life. That outcome was adequately explained. The decision should stand.
- (vii) It was accepted that the appellant had not complied with directions regarding any further evidence on which he might seek to rely, if the decision were to be remade. However, he had recently indicated that he might wish to do so. If set aside, there should be a further hearing.
6. I reserved my decision.
 7. Mr Talacchi sought valiantly to find a basis in the decision for its outcome. However, I find that the SSHD's grounds and submissions, set out above, show that the decision is self-contradictory and lacks legal foundation.
 8. The decision refers to the legal tests for both medical and private life claims but specifies nothing sufficient to show how either test has been met.
 9. Notwithstanding the terms of [65], there was simply no evidence at the necessary medical level. The FtT was correct not to allow the appeal on medical grounds within article 3. The appellant made no contention on that point.
 10. The rest of the decision does not explain how an appeal falling well short of the statutory provisions on private life might succeed. It is difficult, if not impossible, to see how such an outcome might be justified only by the cost of medication, which is the only significant factor mentioned.
 11. Article 8 is not available as an easier alternative to article 3 in a medical case; or at best, it is available to a limited extent, in a case of a child, or where the case involves an element of family life. See the discussion in *MacDonald's Immigration Law and Practice*, 10th ed., 7.90, and the citation from *SL (St Lucia)* [2018] EWCA Civ 1894 at [27]:

... article 8 is not article 3 with merely a lower threshold: it does not provide some sort of safety net where a medical case fails to satisfy the article 3 criteria.
 12. The FtT has decided the case as if the test of "unjustifiably harsh consequences", either within or beyond the rules, gave it scope for an article 8 proportionality conclusion entirely unfettered by statute, case law and rules on the scope for success on medical and private life grounds. That was an error of law.
 13. The foregoing is enough to explain why the decision cannot stand.
 14. I note the FtT's comments at [63] that it remained unclear whether there might be alternative and cheaper treatments in Pakistan. In course of submissions, I observed that parties share the duty to bring evidence in a

case like this, which I think was accepted. The Judge also noted absence of evidence for a change which took place in the appellant's treatment.

15. The SSHD's decision leading to this appeal listed several medications for psoriasis available in Pakistan.
16. Even on the FtT's approach, and if affordability was the decisive criterion, the decision does not explain why the possibility of affordable or publicly supplied alternative treatment in Pakistan is excluded.
17. The appellant has not taken the opportunity to advance any further evidence, in compliance with directions. He has not given even a vague indication of how he might make a better case than he has previously.
18. If this had been a finely balanced case, I would nevertheless have fixed a further hearing; but there is no point in holding out false hope.
19. The appellant has founded upon nothing which even comes close to a right to remain in the UK on a medical or private life basis.
20. The decision of the First-tier Tribunal is set aside. The appeal, as originally brought to the FtT, is dismissed on all available grounds.
21. No anonymity direction has been requested or made.

Hugh Macleman

1 February 2023
UT Judge Macleman