



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

**Case No: UI-2024-001520**  
**First-tier Tribunal No:**  
**[HU/01226/2023]**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 10 July 2024**

**Before**

**UPPER TRIBUNAL JUDGE KOPIECZEK**

**Between**

**GS**  
**(ANONYMITY ORDER MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Mr S. Bellara, Counsel instructed by SMK Law Solicitors  
For the Respondent: Mr S. McKenzie, Senior Home Office Presenting Officer

**Heard at Field House on 22 May 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity, because this is a protection appeal.**

**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. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

### ***Introduction***

1. The appellant is a citizen of India, born in January 1973. He appealed to the First-tier Tribunal (“FtT”) against the respondent’s decision dated 25 May 2023 to refuse his human rights claim, made on 27 February 2022.
2. His appeal came before First-tier Tribunal Judge Murdoch on 25 January 2024. In a decision promulgated on 1 February 2024 she dismissed the appeal in terms of Articles 3 and 8 of the ECHR. Permission to appeal was granted by a judge of the FtT.
3. The appellant’s Article 3 case before the FtT was in terms of his mental health, including the risk of suicide. The Article 8 claim was based on his 16 years’ residence in the UK, his health and an asserted inability to reintegrate in India.
4. The further background to the appeal is best illustrated with reference to the grounds of appeal, which I summarise.

### ***The grounds of appeal***

5. Unfortunately, the grounds of appeal, consisting of 23 paragraphs, are not themselves numbered and, it must be said, not always very clearly expressed. However, I have distilled the grounds into what seem to me to be the three main heads of challenge, although there is some crossover. Ground 1 asserts an error of law in the judge not having given significant weight to the medical evidence in relation to the appellant’s mental health. Ground 2 contends that the judge erred in law in finding that the appellant could access treatment for his mental health in India. Ground 3 argues that there is an error of law in the judge’s consideration of the risk of suicide.
6. So far as ground 1 is concerned, the grounds refer to the core medical evidence as being that set out at para 13 of the judge’s decision, being a psychological report from Dr Gurinder Kaur dated 10 June 2020, and a report from Dr Attalia dated 2 January 2024. At para 36 the judge said that:

“I have assessed the medical evidence above. I accept that the appellant is afflicted by physical and mental health conditions, requiring regular medication and treatment. I am satisfied that the appellant is a 'seriously ill person'.”
7. The grounds then state at para 11 that having made such a significant finding the judge fell into material error by not giving significant weight to the medical evidence. Alternatively, that the judge’s findings are in conflict as she did not give weight to the medical evidence yet still found the

appellant to be a seriously ill person. It is asserted that it is unclear how the judge came to this conclusion without the benefit of cogent evidence.

8. The grounds contend that the judge erred at para 28 of the decision in finding that the GP's letter dated does not mention mental health, which then led to the judge giving little weight to the psychiatric reports. The judge also found that the GP's letter does not mention anti-depressant medication. However, the grounds say, the GP's letter "dated December 2021" does mention that the appellant is "taking relevant medication for depression". Having used the GP's letter as the starting point, it is argued that the judge "overlooked the strength and credibility" of the two psychiatric reports.
9. The grounds refer to para 24 of the decision and the judge's summary of the key findings in Dr Kaur's report but in doing so it is said that she failed to note that Dr Kaur confirmed that she interviewed the appellant for two and a half hours. It is further said in the grounds that although at para 25d she found that the GP would have had more contact with the appellant over time, it is unclear how that could be measured. In any event, it is asserted that the judge did not properly consider that the appellant was interviewed for a lengthy period of time by Dr Kaur. It is then asserted that there was no challenge to the expert evidence and if it was to be disputed "it should have been much earlier in the determination itself".
10. The grounds next argue that the judge's treatment of Dr Attalla's report is not easy to follow and falls into material error in para 32. The concerns that the judge raised in that paragraph, it is said, are not significant and are not sufficient to lessen the weight to be given to Dr Attalla's report. In particular, she found that this psychiatrist did not refer to any parts of the GP's letter but Dr Attalla clearly did refer to the GP's letter and the medication that was prescribed in 2021. It is argued that Judge Murdoch's reasons for not giving relevant weight to the report are not adequately set out, and "those doubts that the judge has expressed about the report have been given far too much weight" given the significance and content of the report "when taken as a whole".
11. Although the judge found at para 36 that the appellant was a seriously ill person, the rest of her decision and the outcome of the appeal does not "sit well" with that conclusion, it is argued. It is contended that the judge considered the medical reports as "mere opinions". This, it is argued, is contrary to the dictum of Sedley LJ in *Miao v Secretary of State for the Home Department* [2006] EWCA Civ 75 at para 17. None of the features of the medical report had been properly considered. The judge's findings at para 41 (in terms of the weight to be attached to the medical reports) contradicts the finding at para 36 (that he is a seriously ill person) it is contended.
12. Ground 2 argues that although the judge found that the appellant is receiving counselling in the UK, she concluded that this form of treatment

was available in India, but did not consider the impact upon the appellant's health if the treatment came to a halt.

13. The grounds further contend that although the judge found that the appellant could access treatment in India, and that his friend in the UK could provide funds for that purpose, the appellant was a vulnerable witness and could not give a clear response. Further, it is asserted that there was no evidence that his friend in the UK would provide such financial support, let alone for any meaningful period or on a long-term basis. In addition, it is questionable as to how a seriously ill, suicidal person would be able to access and attend appointments, and follow a treatment plan in a country where he has no support and has not lived for many years.
14. Ground 3 raises what is described as the "most fundamental error of law" that is said to arise at para 48 of the judge's decision in terms of suicide risk. Although the judge referred to *MY (Suicide risk after Paposhvili)* [2021] UKUT 00232 (IAC) and found that the claimed risk of suicide was credible, she nevertheless rejected the risk of suicide. The grounds argue that the findings are irrational. The finding that the appellant should have been able to control his (suicidal) impulses was beyond the judge's expertise, it is suggested.
15. Lastly, the grounds argue that the judge has not given any reasons as to why the treatment plan and overall diagnosis from Dr Attalla could be disregarded. The psychiatric evidence clearly identified that the appellant would be at risk of self-harm. Even if the judge was correct about the family support available, the grounds argue that the judge did not deal with the issue of self-harm.

### **Submissions**

16. I summarise the parties' oral submissions. Mr Bellara relied on the grounds of appeal. In terms of the asserted failure by the judge to give proper consideration to the medical evidence, Mr Bellara relied on *SS (Sri Lanka) v Secretary of State for the Home Department* [2012] EWCA Civ 155. Despite the evidence of the high risk of suicide it was found that the appellant could still return to India. It was further submitted that there was no consistent evidence of the ability of the appellant's friend to send him money in India.
17. Mr McKenzie pointed out, in answer to a question from me, that *J v Secretary of State for the Home Department* [2005] EWCA Civ 629 is referred to in MY (and thus the judge did consider it). Although Mr McKenzie acknowledged the point about what the judge said about the credibility of the evidence of suicide risk, he submitted that she concluded that the risk could be managed.
18. It was further submitted that the judge gave thorough consideration to the medical reports over 30 paragraphs. The assessment of the availability of medical treatment in India at para 37 was based on well-sourced

background evidence. Mr McKenzie submitted that the judge had considered *AM (Article 3, health cases) Zimbabwe* [2022] UKUT 131 (IAC) at para 19. The grounds, he submitted, were mere disagreement with the outcome.

19. In reply, Mr Bellara submitted that at para 31 the judge had set out Dr Attalla's key findings and there is nothing in those findings that was challenged. It was submitted that the conclusion about the appellant being able to control his impulses is inadequately reasoned. There was either a risk of suicide or there was not. Mr Bellara submitted that it was difficult to understand what point the judge was trying to make (in terms of controlling his impulses), or how he would manage the risk.
20. In addition, Mr Bellara argued that the judge should have gone on to consider how the appellant could possibly return and access treatment, bearing in mind the risk of a rapid deterioration on return. The analysis of PTSD, psychosis and paranoid schizophrenia was also flawed, it was submitted.

### ***Assessment and Conclusions***

21. The hearing before Judge Murdoch took place on 1 February 2024. As regards the medical evidence, at para 12 Judge Murdoch confirmed that the GP's records (Dr R. Singh) were dated up to 1 December 2021. The psychological report by Dr Kaur was dated 10 June 2020 and the most up-to-date medical evidence was the psychiatric report from Dr Attalla dated 2 January 2024. There was also a letter from a counsellor, Sheista Ahmed, dated 24 January 2024.
22. Ground 1 asserts that the first material error of law appears at para 28 of the judge's decision although it is not entirely clear what the material error of law is said to be. The judge was correct to say that the GP's letter dated 1 December 2021 does not list mental health problems as one of the appellant's health problems under the letter's "summary of medical problems". The judge does, however, note that the GP states (later in the letter) that the appellant is on antidepressants for depression.
23. In the light of the contents of that letter the judge was entitled to find that it was highly unlikely that the GP's summary of the appellant's medical problems and medications would not mention mental health issues, especially very significant ones such as severe psychosis and paranoid schizophrenia if they had been a genuine issue for the appellant.
24. I do not accept the contention at paras 12 and 13 of the grounds that the judge's finding of a lack of reference to serious mental health problems in the GP's letter led to her "giving little weight" or "overlooking the strength and credibility" of the two other reports. In relation to Dr Kaur's report she gave a number of reasons at para 25 for the concerns she had about that report, including the significant fact that it was almost four years old at the date of the hearing before her.

25. The grounds are also wrong at para 14 to state that Judge Murdoch failed to note that Dr Kaur interviewed the appellant for two and a half hours. She did mention that fact at para 24b.
26. The criticism of the judge's observation at para 25d. that the contact between the appellant and Dr Kaur would have significantly less than that between the appellant and the doctors at his GP's surgery is similarly misplaced. Although the grounds do not refer to it, the judge noted at para 24c. that Dr Kaur was also providing the appellant with ongoing counselling for the six weeks prior to the date of the report (and ongoing). Dr Kaur's letter dated 12 December 2021 refers to CBT support for the period April to September. In the medical report dated 10 June 2020 at para 5.3 it states that the appellant has CBT therapy "every other day/3 times in a week". What one can see from the GP's letter, however, is that the appellant is described as having been registered with the practice since 20 January 2012. The first medical condition (Type II diabetes mellitus) is stated as being from May 2012 and other conditions referred to up to June 2021 (fatty change of liver).
27. In the light of that evidence, Judge Murdoch was entirely justified in concluding as she did about the relative lack of contact between the appellant and Dr Kaur as opposed to that with his GP.
28. It is not clear to me what is meant by the criticism at para 14 of the grounds that "If the expert evidence was to be disputed in this way, it should have been much earlier than in the determination itself". I assume, but it is not clear, that that criticism is meant to suggest that the judge should have mentioned the point to the appellant's representative at the hearing for comment. If so, such criticism is unfounded. The appellant adduced medical evidence for the judge to evaluate. There was no duty on her to raise with the parties every point arising from the medical evidence, and probably not anything other than a fundamental concern with the expert evidence, for example but not limited to, the expertise of the expert or his bona fides or impartiality.
29. As regards Dr Attalla's report, the grounds criticise the judge for stating at para 32 that Dr Attalla did not refer to extracts or any parts of the GP's letter whereas the report "clearly referred to the GP letter and the medication that was prescribed in 2021".
30. Whilst the way that the grounds are expressed is not entirely accurate, I consider that there is some limited merit in the criticism of Judge Murdoch's decision in this respect, but on close analysis it does not reveal an error in the judge's treatment of this aspect of the evidence. Judge Murdoch noted at para 32a. that Dr Attalla "states upfront" that he *did* have access to the appellant's GP records but said that he "does not mention the GP records or quote any extracts from them in her report". At 32b. she said that Dr Attalla makes significant diagnoses of major depressive disorder, PTSD and moderate-high risk of suicide "without access to the appellant's GP records". It is evident, therefore, that the

judge's finding on whether or not Dr Attalla had access to the GP's records was inconsistent. It is also to be noted that at para 32a. she referred to the appellant having said in cross-examination that he had given Dr Attalla the 1 December 2021 letter from his GP.

31. However, whilst there is the error in the judge's decision to which I have referred above in terms of inconsistency, it is important to consider the context of this part of the decision. She said that Dr Attalla's report suffers from the same problem that arose in relation to Dr Kaur's report. At para 25b the judge referred to the guidance (which I quote in full) from a presidential panel in *HA (expert evidence, mental health) Sri Lanka* [2022] UKUT 111 (IAC), in relation to Dr Kaur's report, namely:

"Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records."

32. It is clear, therefore, that the point that Judge Murdoch was making was that there was no *engagement* by Dr Attalla with the GP's records; the same problem that arose in relation to Dr Kaur's report. Accordingly, Judge Murdoch applied Upper Tribunal guidance that was binding on her in relation to Dr Attalla's (and Dr Kaur's) report.
33. Continuing with ground 1, it is contended that the finding by the judge at para 36 that the appellant is a "seriously ill person" is inconsistent with the overall conclusion in her decision. That argument is developed into the proposition that the judge appeared to consider the medical reports as "mere opinions". In this, respect *Miao* (cited above) is relied on. However, the judge did not reject the expert evidence on the basis of it being mere opinion. She plainly evaluated the evidence as expert evidence but that does not mean that she had to accept the evidence uncritically. There is no merit in the contention in para 18 of the grounds that "None of the final features of the medical report have been properly considered".
34. As regards ground 2, and the issue of treatment in India, the assertion in the grounds that Judge Murdoch did not properly consider the letter from the counsellor Sheista Ahmed dated 24 January 2024 is not made out. The judge gave a full summary of the letter at para 33, and at para 34 accepted that the letter shows that therapy has recently commenced and that the counsellor's view was that the appellant would benefit from long term therapy.
35. Although the grounds assert that the judge did not consider the impact on the appellant's mental health if the counselling comes to a halt, the judge observed at para 42 that the appellant did not provide any evidence that the counselling therapy that he currently receives is not available in

India. She noted at para 44 that there are limited mental health resources in India but at para 45 she found that the appellant could build up a trusting therapeutic relationship with a new counsellor in India as he had done recently in the UK.

36. She referred at para 46 to evidence about financial support and whether he could continue to receive financial support from his friend in the UK for treatment in India. The letter from Atif Mohammed states that he is financially well off and happy to continue supporting him in any way he needs. The judge referred to the appellant's evidence in cross-examination that he did not know whether he could support him in India, that it was possible that he could or possible that he would not. The contention at para 20 of the grounds that because the appellant was a vulnerable witness (which the judge accepted) he "could not give a clear response" is mere assertion. There is nothing in the judge's decision, or in any evidence adduced since her decision, to indicate that he was not able to give clear responses to questions. She was entitled on the evidence to conclude that there was no reason why the financial support could not continue in India.
37. There is a final aspect of ground 2 which must be considered. This relates to the extent to which the appellant, as a seriously unwell person, as the judge accepted he was, would be able to access treatment on his own. Para 20 of the grounds argues that even if funds could be arranged, the question arises as to how he could "access and attend appointments and follow a treatment plan in a country where he has no support and has not lived for so many years", bearing in mind that he is also a suicidal person.
38. The judge appeared to accept that the appellant would not have any support from his wife and child in India, noting at para 49 in a different context that he is estranged from them. She also stated at para 55 in the context of Article 8 that the appellant may have lost contact with his previous family and friends in India. Atif Mohammed states in his letter that he helps the appellant "to access his medical needs like taking him to appointments etc".
39. The contention in the grounds about the appellant's ability, given his health, to access treatment without any support from family or friends in India has merit. I am, therefore, satisfied that the judge erred in law in failing to consider that issue.
40. As regards ground 3 (risk of suicide), which is mostly addressed from para 21 of the grounds, the arguments are again not very clearly articulated. Judge Murdoch found at para 48 that "the claimed risk of suicide is credible". In the same paragraph she said that she took into account that Dr Attalla's view was that there would likely be a marked increase in suicide risk if the appellant was forcibly removed to India and that a serious attempt would be a high probability. She noted the high threshold in Article 3 cases in these circumstances, but also referred to her finding that the appellant is a seriously ill person, is vulnerable and depressed.



41. The grounds assert that it was irrational for the judge to make the finding at para 48 that she had not seen any reliable evidence to show that the risk of suicide “stems from impulses which the appellant is not able to control because of his mental state”. That phraseology adopted by the judge comes from *R (Carlos) v Secretary of State for the Home Department* [2021] EWHC 986 (Admin) at para 159. It is not clear, however, why the judge came to the conclusion she did in circumstances where she accepted, at least, that the appellant suffered from depression and noting that Dr Attalla said that forcibly removing the appellant to India would mean a high probability of a serious suicide attempt. The judge’s reasoning here is not apparent and I am satisfied that she erred in law in this respect for want of adequate reasoning.
42. Furthermore, it is not evident that the judge considered how, if at all, the risk of suicide, which she found to be credible, could be mitigated on the appellant’s return to India. The judge referred to *MY* but I am not satisfied that she applied its guidance, in particular in terms of the application of *J v Secretary of State for the Home Department* [2005] EWCA Civ 629, to which I have already referred.
43. The end result of my consideration of the grounds of appeal is that I am satisfied that the errors of law which I have identified are such as to require the FtT’s decision to be set aside. The Article 8 conclusions plainly cannot stand in the light of the errors of law and which clearly affect the Article 8 analysis.
44. I have considered paragraph 7.2 of the Senior President’s Practice Direction in relation to whether the appropriate course is for the appeal to be remitted to the FtT or retained in the Upper Tribunal for the decision to be re-made. Mr Bellara’s ultimate submission was in favour of a remittal.
45. Having considered whether there are any findings that can, realistically in this case, be preserved, I have come to the view that the appeal must be remitted to the FtT for a fresh hearing. The appellant’s mental state will require a fresh appraisal in the light of any updated medical evidence, which is likely to involve an assessment of his response to the treatment he is receiving. Accordingly, no findings of fact, in favour of either party, can be preserved, thus making it appropriate for the appeal to be remitted.

### **Decision**

46. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* with no findings of fact preserved, to be heard by a judge other than First-tier Tribunal Judge Murdoch.

A.M. Kopieczek  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**8/07/2024**