



IAC-AH-DP-V1

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

Appeal Number: IA/17095/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 March 2016**

**Decision & Reasons Promulgated
On 14 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

**MR ASIF MASOOD KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Mallick of Counsel
For the Respondent: Mr E Tufan, a Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal to dismiss his appeal against the respondent's decision of 26 March 2014 refusing his application for leave to remain on the basis of his family and private life in the UK.

Background

2. The appellant is a citizen of Pakistan who was born on 1 January 1978. The appellant has a wife and two children in the UK. The appellant's wife and two children have been issued with removal directions but do not have a right of appeal separate from that of the appellant. The appellant entered the United Kingdom on 4 October 2006 with leave to enter as a visitor which was valid until 28 February 2007. He was accompanied by his wife and his son who was then [] months old. When his visa expired the appellant, his wife and his son remained in the United Kingdom unlawfully. On [] 2007 the appellant's second son was born in the United Kingdom. On 24 October 2011 the appellant and his three dependants applied for leave to remain under Article 8 of the European Convention on Human Rights. On 1 February 2012 that application was refused with no right of appeal. On 10 February 2012 the appellant submitted a reconsideration request to the Secretary of State. On 26 March 2014 the Secretary of State refused the request for reconsideration and issued the appellant with IS151B notice of removal giving him a right of appeal. On 9 April 2014 the appellant's representatives wrote a pre-action protocol letter stating that judicial review was to be sought. The respondent agreed to reconsider the decision and did so and on 26 March 2014 again refused the application.

The Appeal to the First-tier Tribunal

3. On 9 April 2014 the appellant appealed against the respondent's decision to the First-tier Tribunal. In a decision promulgated on 10 September 2015 First-tier Tribunal Judge Housego dismissed the appellant's appeal. The judge found that the appeal had no merit. In considering the position of the appellant's children the judge found that it would be reasonable for them to go to Pakistan.

The Appeal to the Upper Tribunal

4. The appellant sought permission to appeal against the First-tier Tribunal's decision to the Upper Tribunal. The grounds of appeal assert that the judge made a material error of law in failing to give proper consideration to the evidence regarding [S]. It is asserted that the judge failed to have proper regard to the various reports and that he failed to grasp the extent of [S]'s problems. It is also asserted that the judge erred by failing to have regard to the conclusions in Dr Halari's report. On 28 January 2016 First-tier Tribunal Judge Hollingworth granted the appellant permission to appeal. The grant of permission sets out that it is unclear how the judge has assessed the strength of the elements identified in the reports and that it is arguable that the judge should have attached greater weight to the final conclusions of Dr Halari.

Summary of Submissions

The appellant's submissions

5. The grounds of appeal assert that the judge made a material error of law by failing to give proper consideration to the totality of the evidence regarding [S]. A number of paragraphs are set out from the skeleton argument and submissions that were before the First-tier Tribunal judge. It is asserted that the judge focused on an observation made in February 2012 by a clinical psychologist that [S]'s bilingual background may

contribute to his difficulties but does not account for the nature of the difficulties. Reference is made to paragraph 64 of the decision. It is asserted that the report referred to by the judge was written prior to [S] commencing school and also at a time when [S] was not using language to communicate. It is asserted that [S] uses English more than Urdu at home and that the latest reports account for [S]'s ability to form three word sentences in English only at present. It is asserted that the judge was unreasonable in making a supposition that [S] speaks Urdu at home and is bilingual. It is asserted that this demonstrates that the judge failed not only to grasp the extent of [S]'s problems but has based his decision on what is demonstrably false. It is further asserted that the judge repeats the error failing to consider the medical evidence as a whole when he decides that [S] is not autistic. It is asserted that the judge was not qualified to make decide that [S] is not autistic and that his circumstances are not assisted by being bilingual. Reference is made to a 2015 review which indicates that [S] is still being supported as an autistic child and it is still considered that he suffers from ADHD.

6. In ground 2 it is asserted that the judge erred in law in that on the one hand he indicates at paragraph 96 of his decision that he has a preference for Dr Halari's report above all else and yet fails to have regard to her conclusions on risk on return, in which regard she states that a return to Pakistan is likely to place [S] at risk of social, emotional and mental deterioration. Moving him from a country and an environment where he is doing well at school and at home, where he has developed stability, consistency and he receives the necessary support and interventions, to a country where it is likely he will not have access to such resources. It is asserted that had the judge adopted a rational approach he would have concluded that it would be unreasonable for [S] to return to live in Pakistan.
7. Ms Mallick at the commencement of the hearing indicated that she wished to apply for permission to amend the grounds of appeal to add a further ground which in essence was that the judge accepted the evidence of Ms Hussain and yet made contrary findings against her without giving any reasons why.
8. In relation to the first ground of appeal Ms Mallick submitted that this concerned [S] mainly. [S] has severe developmental delays. He has been in the UK for over seven years and there are a number of reports concerning his developmental delays. Ms Mallick referred to the report of Jenny Head dated 13 November 2012 setting out that there are general developmental delays and in which it describes [S] as having significant difficulties with his language, social interaction, communication and play skills. The report also notes that at home [S] speaks more English than Urdu and often speaks in short sentences. She referred to a report by Dr Okamoto a specialist in community paediatrics. In that report [S] was identified as having social communication difficulties and that his language development is very delayed suggesting a language disorder and not just a delay. She referred to a report from the Hounslow and Richmond Community Healthcare Speech and Language Therapy Unit. The report sets out that [S] presents with social communication and attention difficulties which are consistent with a provisional diagnosis of autistic spectrum condition and attention deficit hyperactivity disorder. A further report in 2014 sets out that [S] is able to form simple sentences but that in less structured and busier

environments including the mainstream classroom [S] has greater difficulty assessing the language used. Ms Mallick referred to a report by Dr York a consultant child and adolescent psychiatrist. Dr York concluded that it is unclear whether [S] does have ASD in addition to his language disorder. She referred to an annual review in 2014 by the Heathfield Language Provision which concluded that [S] continues to demonstrate severe difficulties with social communication. She referred to a report by Dr Rozmin Halari which concluded that he was of the opinion that [S] does suffer from global developmental delay and difficulties with social communication and interaction. Dr Halari considered that [S] met some of the criteria of the autistic spectrum condition and that he also suffers from learning difficulties concluding that he is suffering from a neuro-developmental delay which at present has a significant impact on the quality of his life as well as day-to-day functioning. She submitted that the judge decided outside of his area expertise that [S] is bilingual. She referred me to paragraph 64 of the Tribunal's decision and asserted that the judge's reliance on a comment in the report of Vera Grant was unsupported by the other evidence in the case. She submitted that the judge's conclusion at paragraph 86 that [S] is bilingual and that therefore coping with two languages must be detrimental to him infects the findings with regard to whether or not it would be reasonable for [S] to return to Pakistan. She submitted that the judge was not qualified to make the observations that removal of a detrimental factor of having two languages will be advantageous to [S]. With regard to the second ground of appeal she submitted that although the judge indicated that he preferred the report of Dr Halari a number of the judge's findings are in contradiction to that report. Ms Mallick referred me to paragraph 97 of the decision where the judge sets out *'I note also that his situation is not helped by his bilingual life, that is not a factor that was considered in Dr Halari's report'*. She asserts that the judge does not address what the report does say which is that a return to Pakistan is likely to place [S] at risk of social emotional and mental deterioration and that removing him from a country and an environment where he is doing well at school and at home where he has development stability, consistency and he receives the necessary support and interventions to a country where it is likely that he will not have access to such resources. Any change to routine or structure is likely to precipitate levels of anxiety and distress. Removing him from an environment where positive progress can be made to one where it is likely that he will not receive such support will more than likely cause significant negative impact on his mental health. The doctor set out that he was not aware of any schools that are State equivalent that cater with similar neuro-developmental difficulties and significant learning difficulties. The report concludes that [S]'s progress is likely to be poor without the present interventions both at home and school. Ms Mallick asserted that the judge should have accepted the conclusions of Dr Halari and that it was a contradiction in his findings to find that it would be reasonable for [S] to be removed to Pakistan. In relation to the amended ground of appeal she submitted that there are a great number of mistakes in the First-tier Tribunal's decision. The judge accepted the evidence of Robina Hussain. However, Ms Mallick submitted, at paragraph 93 the judge has set out a number of factors including rejection of the evidence that the house had been expropriated by others. This was in contradiction to the evidence of Ms Hussain who indicated that people had taken the house over.

He also rejected her evidence that [S] would be a pariah in Pakistan but did not give any reasons as to why he did not accept that element of her evidence. She submitted that the judge failed to take into consideration that Ms Hussain was supporting the appellant in this country. She would have to meet those expenses in any event. She submitted that the judge had failed to take into consideration the cost of his school in Pakistan which could be in the region of £2,000 per week. The judge erred in considering Ms Hussain's income as more than adequate. She asserted that the judge made irrational findings. The judge's findings were that the appellants would be returning to the village that they originated from. There was no specialist school available in that village. The appellants' home was dilapidated. She submitted that although [S] was in a mainstream school he was in a specialist unit within that school and was having extreme difficulties. All the evidence indicated that [S] would not be able to attend an ordinary school. She submitted that the judge had not applied the case law correctly although the judge had set out various provisions from the relevant case law he had not applied those principles. She submitted that the judge had failed to identify compelling reasons that would justify the Article 8 right of [S] who is having his developmental needs catered for in the UK to be interfered with. She asserted that the judge did not look at the child's education in the broader sense and had overlooked the fact that there was no school in the village. That [S] had never lived in Pakistan and would have extreme difficulties in adapting to life in another country.

9. Mr Tufan submitted that the grounds of appeal centred around erroneous fact-finding that [S] speaks both Urdu and English. He has submitted that the judge had considered at paragraph 64 the relevant facts. He asserted that it was open to the judge to arrive at the conclusion that he did given the factual background. The main appellant speaks barely any English. It is clear that he must be communicating in Urdu with his child. He referred to page D40 of the bundle where the report indicates that his language skills in Urdu and English are at a similar level. He referred to paragraph 95 onwards and submitted that the judge gave the relevant weight to the report of Dr Halari. He submitted that the matter of the weight to be given to a report is a matter for the judge. He submitted that to overcome the threshold for irrationality was a high hurdle to overcome. He submitted that the negative credibility findings of the judge were open to him. He submitted that Dr Halari in his report indicated that [S] did not have a medical condition. He referred to paragraph 69 and the judge's finding that the family house is available to the appellant. He submitted that the evidence had been strewn with untruths therefore it was open to him to make the finding that he made and that the grounds are merely a disagreement with the judge's findings. He submitted with regard to the new grounds of the appeal the judge was correct to find that Ms Hussain could fund the appellants. The evidence was that she was currently funding them. He submitted that it was trite that the cost of living in the UK was much more expensive than in Pakistan. He submitted that it was a red herring that the cost of the school in Pakistan would be £2,000 a month. He asserted that that is not what the judge says is the cost but that the judge had been advised that the cost of privately providing all the support services might be in the region of £2,000.

10. Ms Mallick in reply asserted that the judge had failed to consider what the best interests of [S] were. She submitted that the starting point according to **ZH (Tanzania)** is to ascertain what is in the best interests of the children. The judge did not consider any of the factors set out in the relevant case law in determining what a child's best interests are. She submitted that the test for perversity was made out in this case as it was perverse for the judge to find that it would be reasonable for [S] to return home to the village in which there were no specialist schools available. In the UK he is educated in a specialist unit in the school. It was therefore perverse that the judge should miss the point that help would not be available in Pakistan. The cost of privately educating him in the UK would be £2,000 a week. The judge ought to have considered how much it would cost in Pakistan to send him to a specialist provider. She submitted that the report of Jenny Head was a pre-school report when [S] was only aged 5 years old and that it simply says that he understood Urdu. She asserted that it is one thing to say that a person can understand a language to jump to say that they are conversant. There is no evidence that [S] was bilingual.

Discussion

11. The grounds of appeal are against the judge's findings in relation to [S]. There is no appeal against the decision in respect of the appellant, his wife or their son Bilal.
12. The focus of the appellant's oral submissions in relation to ground 1 centred around the judge's findings that [S] is bilingual and that this contributes to his difficulties. It is asserted that the judge did not appreciate the extent of his difficulties. The appellant referred to paragraph 64 of the First-tier Tribunal's decision. In this paragraph the judge was considering the evidence given by the appellant and his wife. This was part of the credibility assessment. The report of Vera Grant that the judge referred to was one of the elements that the judge was considering when determining the truthfulness of the assertion that [S] speaks no Urdu. The judge recorded at paragraph 46 that, in answer to questions from him, the appellant's wife said that she spoke Urdu with the children but that they were not fluent. The judge found that the appellant speaks barely a word of English and that he must speak to his children therefore in Urdu only. The concluding sentence of paragraph 64 is that the judge did not accept the appellant and his wife's evidence that [S] speaks no Urdu. In light of the evidence available, there is no error in the judge's finding in respect of this aspect of the appellant and his wife's evidence.
13. The appellant asserts that the judge relied on the report of Vera Grant but that this report was out of date and unsupported by the other evidence in the case. That is not correct. I note that there are several reports that refer to the home language being Urdu and to [S] saying words in Urdu. For example, at pages D40, D41, D49 of the bundle and many more. Having perused the evidence in the file I note that in a report dated 1 March 2013 Dr Jenny Head notes that "*his parents' language is Urdu and it is not uncommon for children in bilingual homes to experience language delay.... They are an Urdu speaking Muslim family from Pakistan*". However, I accept that it is clear from the later reports that [S] has developed language skills in English through intensive support from the language unit in his primary school. It is not clear how much his language skills in Urdu have progressed, although I accept the judge's conclusions

that his father must communicate with him in Urdu as he speaks very little English himself. I find that it was therefore reasonable for the judge to arrive at the conclusion in paragraph 86 that the children are Urdu speakers. Further it is not out with the area of expertise of the judge to find that [S]'s difficulties are exacerbated by his need to converse and assimilate two languages. The early reports note, as a general proposition, that children in bilingual families will often experience language delay.

14. I accept that it appears that the judge has focused on the problems arising from the bilingual home environment when assessing the extent of [S]'s difficulties. For example, in paragraph 86 the judge finds:

“... To that extent the evidence indicates that for him to go to Pakistan will be of assistance to him as he will only have to grapple with one language, and that is the mother tongue of his parents. This aspect of matters has simply not been addressed in the reports, which are predicated on the needs of [S] in the UK. While the reports stress his need for continuity, and removal to Pakistan would inevitably be an upheaval and so detrimental in the short term, it must be a relevant factor that (for the reason that he will have only one language to cope with) the removal of the detrimental factor of having two languages will be advantageous to [S]”
15. At paragraph 97 the judge in assessing the report of Dr Halari, set out:

“... While he benefited from extra help, and his language scores are very low percentile terms, I note also that his situation is not helped by his bilingual life. This is not a factor considered in the report...”
16. I do not accept, however, Ms Mallick's submission that the judge's focus on [S]'s bilingual background has infected the judge's consideration of the extent of [S]'s problems. In paragraph 94 the judge considered [S]'s developmental needs. The judge took full note of the expense of the help he received as an indicator of the extent of his needs.
17. The judge acknowledged that [S] will encounter difficulties in experiencing any change in his life, “whether that is a change of school (such as will occur if he were to remain in the UK and change to secondary school in the UK or to move house).”
18. At paragraph 97 the judge considered the report of Dr Halari. The judge correctly set out that [S] did not have ADHD and that he presented with some traits of autism that did not meet the criteria of autism. This is taken directly from the findings of Dr Halari. The judge noted that [S] has global developmental delay and is in the autistic spectrum but that he does not have a medical condition per se. The judge was entitled to rely on the report of Dr Halari and to prefer that evidence. As set out by the judge, in paragraph 96, Dr Halari is a specialist doctor and was tendered as the expert. I therefore reject the submission that the judge erred in failing to consider the medical evidence as a whole when he decided that [S] is not autistic. It is not clear in any event how much further that would take the appellant's case as (whether it is diagnosed as autism or not) the judge has considered [S]'s global developmental delay and the level of support that he is receiving currently when assessing the reasonableness of him leaving the UK.

19. The judge considered in some detail the cost of private education in Pakistan. The judge concluded the family would be supported by Mrs Hussain and that, on her income of around £50,000 a year, the cost of private education would amount to a modest level of support. The judge, having considered the objective evidence, found that it was in the region of around £40 per month for what was considered to be expensive education. The reference to £2000 a week is taken from Dr Halri's report as the estimate of the cost of all the services currently being received if provided privately in the UK. It is not the cost of assistance in Pakistan. There is no error in the judge's finding that Ms Hussain would be able to assist the appellant financially to meet the cost of education in Pakistan. The judge pointed out, in paragraph 90, the education system in Pakistan is not likely to be as good as the system in the UK but the judge found that the education system in Pakistan is not so inadequate that it would amount to requiring a child to be granted leave to remain in the UK. The judge was considering the test as to whether or not it would be reasonable for [S] to leave the UK. As has been set out in numerous cases it is not necessary for a level of education or health support in the country of origin to be equal to the UK in order for it to be reasonable for a child to leave the UK. As set out by Dr Halari in her report it would be very difficult for [S] to receive the same level of care by a dedicated team in Pakistan. The judge took into consideration, at paragraph 87, that [S] will find it difficult in a village location to get the help he now receives in the UK. However, there is no requirement that the same level of care must be available in the country of origin. Although the judge correctly concluded that [S] has not been diagnosed as autistic but rather shows traits of autism, there are in any event facilities available for children with autism. As set out in the reasons for refusal letter there are specialist care centres for children with autism in Lahore, Karachi and Islamabad. Further, in Rawalpindi there is a self-funded school with 22 autistic children who are taken care of by speech therapist, behaviour therapist and a child psychologist as well as full participation of their parents.
20. On the evidence considered by the judge and his findings of fact there was no material error of law in the judge's finding that it was reasonable for [S] to return to Pakistan with his family.
21. In relation to ground 2 it is asserted that the judge failed to have regard to Dr Halari's conclusions on risk on return. At paragraph 95 the judge set out:
- "I have considered the report of Dr Halari carefully. There are some risks identified, such as at paragraph 83, (A2, report page 18) quotation mark having to move to another country against his wishes and where the expectations of what life would be like are uncertain can render s at risk of significant emotional distress". This is a generic statement of a possibility, but not more. For example, his wishes were not ascertained. That the expectations of life would be uncertain is an assumption predicated on what the appellant and his wife told Dr Halari. The appellant and his wife were, in the one particular in the report that can be verified, Bilal's place of birth, untruthful, and untruthful in other respects as well, as set out. The report set out the appellant's assertions about life in Pakistan and (for example at paragraph 40 and 57 et seq) and treated these assertions as fact, so informing the report's conclusions. I do not find that those assertions (upon which the report is founded) to be factually based. Accordingly, the conclusions of the report have less weight than their face value."

22. The weight to be afforded to an expert report is a matter for the judge. The judge took all the evidence into consideration. A judge does not have to set out each individual piece of evidence considered. The judge set out, at paragraph 43, the documents and the evidence that he had considered. The judge considered that some of Dr Halari's conclusions arose from information provided by the appellant and his wife. The judge was entitled to take that into consideration when deciding what weight to give to the opinion in the report. In the grounds of appeal, a number of the points that are highlighted relate to the prognosis for [S]'s development based on Dr Halari's report that it is likely that [S] will not receive support in Pakistan. The judge took into consideration that there are facilities available that would be accessible given that Mrs Hussain is able to fund private education. The judge has taken into consideration Dr Halari's opinion that a move to Pakistan would be detrimental at para 86. The judge in considering the evidence in the round notes he would have the support of his parents and an extensive family network in Pakistan to assist him in settling in Pakistan. On the basis of all the evidence available the conclusion of the judge that it would be reasonable for [S] to go to Pakistan is one that was open to him.
23. Although not set out in the grounds of appeal Ms Mallick asserted that the judge had not identified what the best interests of [S] are. Although the judge has not explicitly made a finding as to what he considers the best interests are it is clear that the judge has taken into consideration the duty to consider the best interests of the child as a primary consideration. The judge set out at length the relevant paragraphs from a number of cases concerning the need to have regard to the best interests of a child and the approach of the court. At paragraph 80 the judge sets out:
- "I have weighed carefully the situation regarding the children. I bear in mind the guidance in and **MK (India) Best interests of the child** [2011] UKUT 0475, and in **EV (Philippines) v SSHD** [2014] EWCA Civ 874."
24. Whilst it is correct that the judge ought to have arrived at a conclusion as to what the best interests of the children were, the judge has engaged in the process of identifying those interests when considering whether or not it would be reasonable for [S] to leave the United Kingdom. I do not consider this error to be material on the facts of this case as, notwithstanding the failure to make a specific finding, the judge has discharged the substance of the section 55 duty. The judge was required to consider the factors (as relevant) as identified in the case law when considering the best interests of [S]. The judge has identified his particular developmental needs, the fact that he has been in the UK all his life, that he has had lengthy residence in the UK and has known no other home and that he requires extensive help in the UK to meet his needs. The judge weighed those factors in the balance when considering whether or not it would be reasonable for [S] to leave the UK. Any error of law in failing to specify what he considered [S]'s best interests to be would not be material to the outcome of the appeal based on the judge's overall conclusion that it is reasonable for [S] to go to Pakistan after having considered the needs of [S].
25. The third ground of appeal, added at the hearing, was that the judge having accepted the evidence of Mrs Hussain and then rejected aspects of that evidence failing to give any satisfactory explanation. Reference was made to paragraph 93 where the judge

had set out that he rejected the evidence that the house had been expropriated by others. It is asserted that this is in contradiction to the evidence of Ms Hussain. At paragraph 58 the judge records Ms Hussain's evidence, which was that no one now lives in the house, and at paragraph 59, in re-examination, her evidence was that they had tried to put into court that the land belongs to them. At paragraph 69 the judge deals with the discrepancy between the appellant's evidence and Ms Hussain's evidence. He records that her evidence was that a claim had been made in Court. That as there was no evidence of that, and because the appellant gave different evidence, although he accepted that Mrs Hussain believed that be the case it was not made clear the reason that she believed that. The judge has made clear why he arrived at the conclusion that he did. His conclusion is not in contradiction to the evidence of Ms Hussain who clearly stated in oral evidence that no one lived in the house. Ms Mallick submitted that the judge gave no reasons as to why he rejected Ms Hussain's evidence that [S] would be a pariah in Pakistan. The judge set out, at paragraph 74, that there was no evidence provided that [S] would be a pariah in Pakistan other than the assertions being made in oral evidence. The judge considered that Ms Hussain has not been to Pakistan for many years so could have nothing other than an historic view. The judge clearly has given a reason as to why he did not accept this assertion of Mrs Hussain. A judge can accept, in general terms, that a witness is a witness of truth without accepting that all of a witness's beliefs or views, however honestly held, are necessarily borne out. There is no material error of law in the judge's findings in relation to the evidence of Ms Hussain.

26. For the reasons set out above there was no error of law such that the decision of the First-tier Tribunal is set aside

Notice of Decision

The appeal is dismissed. There was no material error of law in the First-tier Tribunal's decision.

I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

Signed *P M Ramshaw*

Date 11 April 2016

Deputy Upper Tribunal Judge Ramshaw