



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/00419/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 5 July 2017**

**Decision &**

**Promulgated**

**On 13 July 2017**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**MOHAMMAD SAJID**

(ANONYMITY DIRECTION NOT MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Ghafoor, Ghafoors Immigration Services

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Mohammad Sajid, was born on 12 November 1969 and is a male citizen of Pakistan. The appellant applied for leave to remain on the basis of his private and family life on 5 December 2015 but, by a decision dated 16 December 2015, the appellant refused the application. The appellant appealed to the First-tier Tribunal (Judge Saffer) which, in a decision promulgated on 17 November 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. There are three grounds of appeal. First, the appellant asserts that the judge applied the incorrect test when deciding whether or not to consider the appeal under Article 8 ECHR. The judge failed to examine the “degree of hardship” which the appellant would face upon return to Pakistan. For reasons which I shall discuss in greater detail below, I do not find that this ground has merit. In my judgment, as the judge has accurately expressed it [34], this is a case where the application of the Immigration Rules does not leave any “gap” between the provisions of the Rules and the appellant’s appeal on Article 8 ECHR grounds. As the judge has shown, this is a case which falls squarely within the “Article 8” Rules of HC 395.
3. Secondly, the judge’s decision is challenged on the grounds of procedural irregularity. The appellant appeared at the First-tier Tribunal hearing without a legal representative although he did bring with him two witnesses. As I understand it, the witnesses speak English but the appellant does not. The grounds [2] appear to suggest that the witnesses required an interpreter but it is clear from the judge’s decision (he gives a thorough summary of the evidence which they gave to the Tribunal) that the witnesses were able to give their evidence in English. It appears (according to the grounds of appeal) that an interpreter attended late but was told by the judge that his services were not required. The question remains, therefore, whether the judge perpetrated a procedural irregularity by proceeding in the absence of an interpreter whose services, it is argued, were required by the appellant, if not the witnesses.
4. I find that the ground does not have merit. It is clear from the judge’s record of proceedings and from the Rule 24 statement of 10 May 2017 submitted by the respondent which, in turn, quotes from the Presenting Officer’s note of evidence, the appellant chose not to give evidence at the hearing. The appellant would have been entitled to make oral submissions to the judge but the grounds of appeal do not complain that he was denied the opportunity to do so. Indeed, it appears from the record of proceedings that the appellant had been content to proceed without an interpreter. I am satisfied that, had the appellant asked for the services of an interpreter, then the hearing would have been adjourned in order to enable one to attend. I do not accept that a highly-experienced judge would have proceeded with the hearing if it had been made clear to him by the appellant or the witnesses that the appellant had needed an interpreter in order to give oral evidence or make submissions. However, (i) the appellant chose not to give evidence (ii) he has not complained that he was denied the opportunity to make oral submissions and (iii) no application was made by the appellant for an interpreter to attend.
5. Thirdly, the grounds assert that the judge made an error of fact. The basis of the appellant’s claim is that he is suffering from medical conditions, including epilepsy, which mean that he requires assistance with his bodily functions every day. At [27], the judge found:

I do not accept the family in Pakistan would not be willing or able to assist the appellant if he returned for the following reasons. They are directly related. There was no evidence that they would not [assist the appellant]. I bear in mind in this regard *TK (Burundi)*. The family here can work full-time

and pay for the additional care required. They can get medication from the local dispensary in the village and treatment from that clinic or the hospital which is only twenty minutes drive away. Conflicting evidence as to the extent of any learning difficulty [suffered by the appellant] without any explanation as to the reason for the change in diagnosis or explanation from an expert as to how it has been assessed means that it has not been established he has a cognitive impairment.

6. On the basis of this finding, the judge concluded that the appellant would be able to reintegrate into society in Pakistan. He found that there existed no very significant obstacles to the appellant reintegrating because he would be able to be cared for by members of his family in Pakistan. At [14], the judge recorded details of the appellant's Pakistan family. The grounds assert that he did so inaccurately. The appellant does not have four siblings living in Pakistan (as the judge appears to have found at [14]) but only "an elderly aunt" who has no "real" relationship with the appellant. This aunt has, in turn, a daughter (the appellant's cousin) who is married with children and lives some distance away. The grounds assert that these relatives would be unable or unwilling to assist the appellant.
7. I am not satisfied that the judge's error (if he has perpetrated one) is in any way material. Where the judge states that the appellant has four siblings in Pakistan he appears not to be making a finding of fact but to be recording the evidence of one of the witnesses [14]. In any event, the issue does not appear to be the number of relatives the appellant may have but whether or not they are likely to assist him if he returns to Pakistan. As regards that issue, I find that the judge has made sound findings. As the judge states, there was no evidence to show that the relatives would not assist the appellant. Indeed, the grounds of appeal simply proceed on the assumption that the "elderly aunt" and the cousin would not assist. It was for the appellant to prove his case and it is clear that he has failed to do so. I acknowledge that the appellant's medical conditions are problematic, but it is simply not enough to assert, without evidence, that assistance from family members would not be forthcoming. I also find that the judge was entitled, for the reasons he gives at [27], to find that the appellant does not suffer cognitive impairment. The judge was clearly not satisfied with the expert evidence and he has given cogent reasons for not relying upon parts of that evidence. Ultimately, the question in this appeal is whether the judge was entitled, on the basis of the evidence which he received, to make his findings at [27]. I have concluded that he was so entitled and that his conclusions are not perverse as the grounds seem to suggest. In the light of that conclusion, the appeal is dismissed.

### **Notice of Decision**

8. This appeal is dismissed.
9. No anonymity direction is made.

Signed

Date 6 July 2017

Upper Tribunal Judge Clive Lane

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 6 July 2017

Upper Tribunal Judge Clive Lane