



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/01916/2020 (V)

THE IMMIGRATION ACTS

Heard at : Field House  
On : 16 March 2021

Decision & Reasons Promulgated  
On : 26 March 2021

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ASHOK CHATTERJEE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Fazli, instructed by Schneider Goldstein Immigration Law

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there was no prior objection from the parties. The form of remote hearing was skype for business. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.
2. The appellant is a citizen of India whose date of birth is recorded as 25 December 1992, although he claims his correct date of birth is 25 December 1994. He has been given permission to appeal against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his private life human rights claim.

3. The appellant claims to have arrived in the UK in 1996. He claimed asylum on 7 April 2011 on the basis that he did not know anyone in India. His claim was refused and certified as clearly unfounded on 31 May 2011. On 13 July 2011, the appellant made an application for leave to remain on the basis of 14 years' long residence, but that was refused on 13 September 2011. The appellant then made various further submissions between April 2014 to June 2016, all of which were based largely upon his medical condition, kidney disease, and subsequently colon cancer, all of which were refused under paragraph 353 of the immigration rules on 2 June 2014, 3 July 2015 and 26 September 2016 respectively, as the respondent did not consider the threshold for a claim on Article 3 or 8 grounds had been met. The appellant's claimed residence prior to 2009 was not accepted and therefore the respondent considered that the requirements for leave to be granted on the basis of long residence had not been met.

4. The appellant's most recent submissions, made on 30 May 2019, were again based upon the appellant's kidney problems and colon cancer, as well as his long residence of over 20 years in the UK. It was stated in those submissions that the appellant currently suffered from severe chronic stage 3 kidney disease, hypertension and proteinuria. It was stated that the appellant's mother passed away at the time of his birth, that he had no siblings and that his father was a drug addict and an alcoholic and had abandoned him in 2009. His kidney problems started in 2009. On 1 February 2011 he attempted to kill himself by jumping out of the window but was prevented from doing so by the police. He claimed asylum shortly afterwards on 7 April 2011, after being encountered by the police and social services, on the basis that he did not know anyone in India, but his claim was refused, as were his subsequent submissions. On 19 May 2016 he was diagnosed with a serious form of bowel cancer. It was submitted that the appellant was supported by friends in the UK but had no one to support him in India.

5. The appellant's submissions were supported by medical evidence and letters from friends and were treated by the respondent as a fresh human rights claim. A decision refusing that claim was made by the respondent on 17 January 2020. In that decision the respondent considered that the suitability provisions in S-LTR.4.4 applied, as the appellant had failed to pay an outstanding litigation debt to the Home Office, and that S-LTR.4.5 applied on the basis that he had failed to pay NHS charges totalling £9009. The respondent considered further that there was insufficient evidence to show that the appellant had resided in the UK continuously for 20 years and that there were no very significant obstacles to integration in India for the purposes of paragraph 276ADE(1), nor exceptional circumstances outside the immigration rules. The respondent did not consider that the appellant's medical condition reached the Article 3 threshold as there was treatment available in India and did not consider that there was a risk of suicide sufficient to meet the Article 3 threshold.

6. The appellant appealed against that decision and his appeal came before First tier Tribunal Judge Brannan on 22 October 2020. The appellant gave oral evidence before the judge. The judge noted the appellant's own evidence that he still had bowel cancer and was on a waiting list for dialysis but also noted the evidence from his oncologist and nephrologist which stated that his bowel cancer had been successfully treated and he

remained under observation every six months and that he had stage III kidney disease which did not require dialysis. The judge permitted further medical evidence to be submitted after the hearing to resolve the inconsistency in the evidence.

7. With regard to the appellant's cancer, the judge did not consider that the Article 3 threshold was met, as the appellant was in remission and was receiving nothing more than monitoring. With regard to the kidney disease the judge noted that the medical evidence confirmed that he did not require dialysis or any day-to-day treatment and again found that the Article 3 threshold was not met. The judge also had before him evidence of the appellant's mental health problems which confirmed that he had major depressive disorder with mood-congruent psychotic features and stated that the appellant contemplated suicide frequently and that his friends in the UK were protective factors. Judge Brannan accepted that the appellant suffered from a form of depression but did not accept that the consequence of his removal to India would be suicide and did not accept that the Article 3 threshold was met.

8. As for Article 8, the judge noted the appellant's evidence that his father did not send him to school but sent him to other people's houses to work and that he would often accompany his father to building sites where his father worked. He noted the appellant's account of having been abused as a child when sent to people's houses and, having observed the appellant breaking down in tears, accepted his evidence as sincere. The judge noted the circumstances in which the appellant came to the attention of the authorities, when encountered working illegally on a building site and then being taken in by social services until assessed as an adult. He had attempted to jump out of a window when put in a hotel by social services as he was not allowed to leave and was not being fed. The judge had before him witness statements from three of the appellant's friends who claimed to have known the appellant at various periods of time. The judge accepted that the appellant had established a private life in the UK but did not accept that he had been living in the UK continuously prior to 2009 and did not accept that there were very significant obstacles to his integration in India. The judge considered the pros and cons in relation to proportionality and concluded that the cons outweighed the pros and that therefore the respondent's decision was proportionate. The judge accordingly dismissed the appeal.

9. The appellant sought permission to appeal to the Upper Tribunal on four grounds: that the judge had given inadequate consideration to the medical evidence and had failed to make findings on certain aspects of the appellant's mental health conditions including the risk of suicide; that the judge had failed to give sufficient reasons as to why the appellant's mental and physical health conditions did not meet the test for demonstrating very significant obstacles to integration in India; that the judge failed to make findings of fact on material issues relevant to the credibility of the appellant's account, including his account of abuse as a child; and that there was inadequate consideration of the witness statements from the three witnesses.

10. Permission was granted in the First-tier Tribunal on 22 July 2020 on the grounds that it was arguable that the Tribunal had erred in failing to fully appreciate the severity of the

appellant's depression and the difficulties it would cause him in his country of origin, when considering the issue of very significant obstacles to integration and in the proportionality assessment. The other grounds were found not to be arguable.

11. The matter then came before me and both parties made submissions on the error of law matter.

12. Mr Fazli submitted that the judge had failed to make findings on the appellant's mental health condition. Given the opinion of Dr Goh that the appellant was suffering from a major depressive disorder with psychotic features, the judge's finding that the appellant suffered from "a form of depression" was wholly inadequate. The judge was silent on the psychotic elements of the appellant's condition and his past suicide attempt and made no findings on the report of auditory hallucinations. Those matters, and the high risk of harm referred to by Dr Goh were material to the judge's assessment and also to the question of long residence. The judge failed to give proper reasons why the appellant's conditions did not meet the test for 'very significant obstacles' and did not follow the test in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813. The judge failed to take into account the abuse the appellant suffered as a child, failed to make a finding on whether the abuse had occurred and failed to consider how the appellant could integrate into life in India after the experiences he had had. The judge failed to consider that the abuse suffered by the appellant could have affected his linguistic abilities and that was relevant to the assessment of length of residence in the UK. The judge erred by discounting the weight to be given to the three witnesses' statements just because they were not present at the hearing.

13. Ms Cunha accepted that the judge had made no finding on the abuse when considering the question of 'very significant obstacles', but submitted that there was limited evidence before him in that regard and that he otherwise went through all the evidence and was entitled to conclude as he did. The judge's decision on very significant obstacles took account of the guidance in Kamara and Parveen v The Secretary of State for the Home Department [2018] EWCA Civ 932 and considered the medical evidence. The medical evidence did not assess the appellant as being a suicide risk. The judge considered the medical opinions and was entitled to conclude that the Article 3 threshold was not met. The judge was entitled to accord less weight to the statements of the witnesses because they were not present at the hearing. The judge's decision was a safe one and the grounds were simply a disagreement.

14. Mr Fazli reiterated the points previously made in response.

## **Discussion and conclusions**

15. I have to agree with Ms Cunha that when the judge's findings on the medical evidence are carefully considered alongside the evidence that he actually had before him, the challenges made in the grounds of appeal essentially amount to little more than a disagreement. It is relevant to note that the grounds make no challenge to the judge's

findings on Article 3 in relation to the appellant's physical medical condition, namely his kidney disease and colon cancer. Indeed, the judge provided the appellant with an opportunity to produce further evidence and undertook a careful assessment of all the evidence, reaching conclusions in that regard, at [25] to [28] and [84], that were fully and cogently reasoned and were properly open to him.

16. The challenge in the grounds is to the judge's findings on the appellant's mental health condition, asserting that he did not give proper consideration to the medical evidence and to the full extent of the appellant's condition. However, again I agree with Ms Cunha that the judge was only able to make findings on the evidence before him and that that evidence was clearly limited.

17. The first report of 1 October 2019, from Dr Sawa, a consultant psychiatrist at the Private Therapy Clinic, referred to the absence of a mental health history and to the appellant expressing feelings of low mood with suicidal thoughts for the past two weeks but having no intentions or plans for acting on those thoughts and just wanting to feel better. The report confirmed no evidence of psychotic experiences and referred to the appellant suffering from "moderate depressive episode with somatic symptoms", meaning that his psychological problems were caused by overly focussing on his physical problems. There was no mention of the appellant having been abused as a child or of having psychological problems on such a basis.

18. The second report dated 19 February 2020 was from Dr Goh, a clinical psychologist, and was based upon a 75 minute interview with the appellant which also concluded that his current episode of depression appeared to have been triggered by his medical conditions. Dr Goh referred to the psychological testing being brief. He opined that the appellant presented with psychological symptoms that were "strongly suggestive of a psychological disorder", referring to the depressive symptoms appearing to be accompanied by some psychotic features following the appellant's reference to some auditory hallucinations at night, but he made no formal diagnosis of psychosis. At page 15 at the end of his diagnostic table, he confirmed that the symptoms were not explained by conditions such as schizophrenia or other psychotic disorders. Dr Goh referred to the appellant's expression of suicidal ideation, but noted that there was no intention of carrying that out. Contrary to the assertion in the grounds of appeal, Dr Goh did not refer to the appellant having attempted suicide twice, but he stated that the appellant reported two near suicide attempts in 2019 - the grounds at [4] misquote the evidence. Again there was no mention of any abuse as a child and, in fact, the report referred at paragraph 4.1 to the appellant denying any form of trauma or significant incidents during his childhood, other than having been abandoned by his father.

19. In light of that evidence, I do not consider the judge's assessment at [29] to [33] to be materially lacking and I do not agree with the assertion that the judge underestimated or disregarded the severity of the appellant's depression. The judge was entitled to draw the conclusions that he did from the lack of evidence of any treatment being received in the UK, the lack of evidence of inability to access relevant medication in India and the lack of evidence of the friendships which Dr Goh considered to be the protective factors for the

appellant, and to assess the expert evidence in that context. The judge considered the risk of suicide but concluded that the evidence did not demonstrate a risk giving rise to an Article 3 breach. That was a conclusion the judge was perfectly entitled to reach on the basis of the limited evidence before him.

20. The same applies in regard to the judge's consideration and findings on the issue of 'very significant obstacles to integration', where again Mr Fazli criticised the judge for failing to include in his assessment the psychotic elements of the appellant's depression, the hallucinations and the abuse he suffered as a child, but again the evidence before the judge was limited and the findings made were entirely within the limitations of that evidence. Contrary to the assertion made by Mr Fazli, the judge did not take an overly simplistic view of the test in Kamara and did not merely focus on prevention, in the context of return to India, but at [65], [66] and [83] to [84] he clearly carefully considered the appellant's ability to integrate into society in India, taking account of his physical and mental problems, and properly applied the relevant test.

21. Mr Fazli's challenge, in the third ground of appeal, is to the judge's approach to the issue of the abuse suffered by the appellant in his assessment of his credibility and length of residence in the UK, his linguistic abilities and his mental health problems, and in regard to his ability to integrate into life in India. The grounds refer at [21] to the judge accepting the appellant's evidence as "sincere" but failing to make findings on the impact of the abuse on the appellant's evidence and his private life. However, as Ms Cunha properly submitted, it was not for the judge to make findings on the psychological impact of the abuse when there was no expert evidence before him in that regard. The judge took the matter into account in making his findings to the extent that he could, but as he pointed out at [56] to [58], there was no evidence from professionals to assist in making his assessment.

22. Finally, Mr Fazli criticised the judge for giving only limited weight to the statements of the witnesses whose evidence sought to confirm the appellant's account of his length of residence in the UK. However the judge was perfectly entitled to accord the weight that he did to those statements and he gave full and proper reasons for doing so at [59]. Contrary to the assertion in the grounds, the judge's consideration of the statements formed part of a rounded assessment of the evidence of the appellant's length of residence in the UK, in accordance with the guidance in Tanveer Ahmed, from [48] to [61], and the judge provided full and cogent reasons for rejecting the appellant's claim to have resided in the UK for the lengthy period stated.

23. In all of the circumstances it seems to me that the judge's decision is a sound and comprehensive one including a full and careful assessment of the evidence and clear and cogent findings. I do not find any material errors of law requiring the decision to be set aside. On the evidence before the judge, the conclusion that he reached was one which was fully and properly open to him.

**DECISION**

24. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed *S Kebede*  
Upper Tribunal Judge Kebede

Dated: 18 March 2021

Appellant UT appeal, Dismissed to Appellant & Allowed to SOS