



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/17167/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House (by remote means)
On 14 April 2021 via Skype

Decision & Reasons Promulgated
On 06 May 2021

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

DALAWAR HUSSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Williams, Counsel
For the Respondent: Mr Anderson, Counsel

DECISION AND REASONS (V)

1. The appellant has appealed against the respondent's decision dated 7 October 2019 to refuse his human rights claim on the ground that his deportation to Pakistan would breach his human rights. In this decision I determine the sole narrow issue remaining in dispute: whether the appellant's medical conditions and particular circumstances are such that he faces treatment contrary to Article 3 of the ECHR, if removed to Pakistan.

Background

2. The appellant, a citizen of Pakistan, was born there in 1965, and is 55 years old. His immigration history is very lengthy but for the purposes of this decision can be succinctly stated. He arrived in the United Kingdom ('UK') lawfully in 1984, when he was 19 years old. He married a British citizen and was granted indefinite leave to remain in 1986. He has five British citizen children who are all resident in the UK. The appellant was convicted of serious drugs offences which resulted in a five-year sentence in 1995, a three-year sentence in 2001 and a seven-year sentence in 2008. On 18 July 2011 the respondent made a decision to deport the appellant. At around this time, his marriage broke down and he told me at the hearing that his divorce was finalised in 2011 or 2012. It appears that the appellant stopped taking illegal drugs whilst serving his last sentence, when he undertook coursework to assist with this. Although he has not been supported by his wife since his last release from prison, he has had the support of some of his children and his sister, Parveen Akhtar, with whom he lives in Newport.

Procedural history

3. The appellant's respective statutory appeals against a decision to deport him in 2011 and a further decision to refuse to revoke the deportation decision in 2012 were dismissed. He became appeals-rights exhausted on 29 November 2012. In February 2013 the appellant was critically ill in hospital and remained in a coma for five weeks. Subsequent efforts to remove him were unsuccessful and complicated for reasons relating to his medical condition and treatment. Many applications on health grounds were made on behalf of the appellant over the intervening years. The respondent ultimately acknowledged the appellant's fresh claim submissions based upon medical evidence in the decision under appeal, i.e. the respondent's further decision dated 7 October 2019, refusing his human rights claim and refusing to revoke the deportation order.
4. The appellant's appeal against that decision was dismissed on all grounds by the First-tier Tribunal ('FTT') in a decision dated 14 January 2020. The FTT accepted that the appellant had spent most of his life in the UK but there were no significant obstacles to his reintegration to Pakistan, noting at [43] that the evidence before it and an earlier FTT (Judge Davidge) in 2012 was to the effect that he was in contact with relatives and his siblings in his home area of Pakistan, who could assist him with reintegration. Although the FTT accepted the appellant's relationship with his children and grandchildren in the UK, it found that this did not constitute family life for the purposes of paragraph 399 of the Immigration Rules and the relevant circumstances were not "very compelling". The FTT dismissed the appeal on both Article 8 and Article 3 grounds. Permission to appeal to the Upper Tribunal ('UT') was only granted in relation to Article 3.
5. In a decision dated 10 June 2020, UTJ Lindsley concluded that the FTT erred in law in its approach to Article 3 because it did not adequately reason how the appellant would be able to access dialysis treatment in Pakistan, in particular the decision

was silent as to how the appellant's siblings in Pakistan would be able to practically assist him with his thrice weekly trips to the hospital for dialysis, which were necessary to obviate sudden death. UTJ Lindsley preserved the unchallenged findings of the FTT with respect to Article 8, as well as the appellant's ill-health and his need for regular treatment. UTJ Lindsley therefore narrowed the issue in dispute to Article 3 and in particular whether the appellant would be able to access the treatment he requires to avoid sudden death.

6. There have been two case management hearings before me. In addition, the final hearing on 27 January 2021 was adjourned to enable the appellant to obtain further medical evidence. Over the course of those hearings and again at the beginning of this hearing the parties agreed the following matters.
 - (i) Although UTJ Lindsley's error of law decision was made on the papers pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, neither party objected to this course, and having considered JCWI v President of the UTIAC [2020] EWHC 3103 (Admin), both parties accepted that the error of law decision was not vitiated by any unfairness, such that the matter could fairly proceed before me as a resumed hearing.
 - (ii) UTJ Lindsley preserved the unchallenged factual findings of the FTT and the parties agreed that the only issue in dispute was contained at [17] of UTJ Lindsley's decision and relates solely to Article 3 of the ECHR; in particular the availability of dialysis treatment in Pakistan for this particular appellant and his ability to practically access that treatment in all the circumstances, in the light of the guidance contained in AM (Zimbabwe) v SSHD [2020] UKSC 17, and other relevant authorities.
 - (iii) The parties accepted that AM (Zimbabwe) is authority for the proposition that it is for the appellant to adduce prima facie evidence "capable of proving" that, if not challenged or countered, such evidence would make out his case that Article 3 of the ECHR would be breached by his removal. In other words, the appellant has the initial burden of demonstrating "substantial grounds" for believing, by reference to evidence "capable of proving", that the treatment he requires would not be available or accessible to him in Pakistan. The parties also agreed that it was only if the appellant displaced this initial burden that the respondent was then required to dispel any "serious doubts" raised by the evidence, as explained by Lord Wilson in AM (Zimbabwe) (supra) at [23] and [32]-[34].
 - (iv) The appellant has an extensive medical history and suffers from end stage renal failure for which he is on haemodialysis three times a week. This leads to tiredness particularly the day after each dialysis session. He has also been diagnosed with a number of other medical conditions but the main basis for his contention that he faces a breach of Article 3 upon removal relates to the practical unavailability and / or inaccessibility of dialysis in his home area of Pakistan.

- (v) The appellant is a vulnerable witness and specific adjustments have been agreed for him to effectively participate in the hearing. The hearing could fairly take place remotely albeit adjustments would be made to cater for the appellant's particular physical needs and vulnerability.
- (vi) The remaining witnesses would give evidence from their respective homes in Newport with the exception of Iftikhar Hussain who would give evidence from his home in Pakistan.

Evidence

Medical evidence

7. When the matter first came before me for a final hearing in January 2021, the appellant relied upon medical evidence contained at pages 76 to 93 of his bundle. This included an email dated 27 November 2020 from Dr Meran, the appellant's treating Consultant Nephrologist, that his clinical condition remained "*exactly the same*" as outlined in a short letter dated 5 December 2019 and a very short letter from Dr Ali Ionescu, a Consultant Respiratory Physician, dated 20 October 2020.
8. After the adjournment of that hearing, two additional items of more up to date medical evidence were filed. The first is a letter dated 3 February 2021 from Dr Thwin, who describes herself as a 'specialty doctor in renal medicine'. Dr Thwin's letter appears with a letterhead that indicates that she is a specialty doctor working with Dr Meran at the Newport Dialysis Unit of the University Hospital of Wales. This letter lists the appellant's primary diagnosis of end-stage renal failure as well as a number of additional diagnoses before stating the following:

"With regards to his kidney disease, he has end-stage kidney failure and is dependent on ongoing three times a week, four hours each session. Haemodialysis treatment is to sustain his life. Mr Hussain has no urine output which is indicating he has no residual renal function. Should he miss or delay even one haemodialysis session then he risks sudden death.

He is not a suitable candidate for renal transplantation due to his co-morbidities and he will require dialysis for the rest of his life.

With regards to his significant co-morbidities, he also requires adjunctive treatment of renal-related anaemia and renal-related bone disease. His arteriovenous fistula (AVF) for haemodialysis access has been under review by the Vascular Access Team. Similarly, his ongoing significant recurrent chest infections have been reviewed by Chest team.

Furthermore, dialysis treatment itself has significant side effects resulting in the patient being extremely fatigued with a general lack of well-being for the whole of the day after the dialysis treatment.

His general health, beyond his dialysis needs is also poor with chronic leg pain due to his renal failure and smoking which significantly impacts on his activities of daily living. He also has a poor appetite, poor nutrition, severe depression and financial

difficulties. There is no chance of his health condition improving but he will survive for a certain period by continuing his current dialysis regimen treatments.

In this situation, and with his multiple medical comorbidities I feel that, he is not medically fit or suitable to fly to Pakistan or anywhere else."

9. In a letter dated 15 February 2021, Dr Ionescu summarised the appellant's various conditions as follows: bronchiectasis with previous severe haemoptysis requiring admission to intensive care – bronchial artery embolization; chronic airway disease on inhaled medication; moderately calcified aortic stenosis and regurgitation with moderate MR (under cardiology); chronic renal failure (end stage) on regular dialysis, under the care of nephrology. Dr Ionescu noted that the various conditions are chronic and any improvement in the conditions is likely to be short lived. She recorded that the appellant was admitted to hospital with his lung condition at the end of 2020 and seen in clinic in January 2021. Dr Ionescu did not assess fitness to fly because *"from a lung point of view"* any such assessment would need to be very recent to the point of flying.

Evidence from the appellant and family members

10. At the hearing the appellant confirmed three witness statements 22 August 2012, 9 December 2019 and 30 November 2020. He was cross-examined by Mr Anderson at some length but was provided with appropriate breaks throughout and of course had the support of his solicitors, as he gave his evidence from their offices.
11. The appellant has extensive close family members in Pakistan and the UK. Many have prepared statements, affidavits and letters in support of the appellant's appeal. These are to be found in the appellant's bundle at pages 48 to 75. I have carefully considered all of this evidence. Four family members were tendered at the hearing and cross-examined: Iftikhar Hussain (the appellant's brother-in-law who gave evidence from Pakistan); Samara Hussain, the appellant's daughter (who gave evidence from her home in Newport); Mohammed Mothansun Hussain (who gave evidence from his home in Newport), and; Perveen Akhtar, with whom the appellant lives in Newport and who gave evidence from her home. Many of the family members have the same surname and I therefore refer to them by their first names for the remainder of this decision. In doing so I mean no disrespect, I simply wish to be clear about which family member I am referring to.
12. Perveen relied upon a statement dated 2 December 2020 in which she confirmed that the appellant continued to reside with her, as he has done since 2012, and she cared for him *"almost 24 hours per day"*. The appellant has two other sisters. Nasreen, who lives in Newport, prepared a letter of support in which she said that she assisted her brother with *"regular sums of money"* from her own wages as a cleaner, and Shugufta who lives in Arifwala, Pakistan, with her husband Iftikhar. He relied upon an affidavit prepared in Pakistan, when giving his evidence. The appellant has a brother, Amran who also lives in Arifwala. He prepared an affidavit dated 14 December 2019, in which he described himself as a poor man and claimed that it would be *"impossible"* for him to look after the appellant.

13. As noted above, the appellant has five children in the UK, two of whom gave evidence at the hearing. Mohammed Mothansun relied upon a statement dated 30 November 2020 in which he explained that he lived walking distance from the appellant and visited regularly in order to help look after him. The appellant's daughter Samara relied upon a statement dated 30 November 2020. She also lives nearby in Newport. In her oral evidence she explained that she has been financially supporting her father by giving him £30-40 per month.
14. Although she did not give evidence there was a supporting letter dated 19 June 2019 from the eldest child, now known as Aleema Khan. In that letter she explained that she worked in the NHS and together with her siblings she supported the appellant financially and physically. The youngest son, Mohammed Adam lives with his mother, the appellant's former wife in Birmingham but is said to visit the appellant once or twice a month. There was little from another son, Ansar and the appellant confirmed that they were not in touch.

Submissions

15. Both Counsel acknowledged that the legal principles were agreed and the case turned on the application of the facts and evidence to those established principles. Mr Anderson relied upon his skeleton argument and the country background information specifically obtained for this appeal to support his submission that the requisite free dialysis treatment would be available and practically accessible to the appellant in Arifwala, and the contrary assertion by the appellant and his family members in Pakistan was incredible and unreliable. Ms Williams relied upon a skeleton argument prepared by previous Counsel instructed on behalf of the appellant, Mr James. She submitted that the evidence was so stark that the proper application of the AM (Zimbabwe) test could only properly lead to one conclusion: the appellant's removal to Pakistan would breach Article 3.
16. At the end of the hearing both representatives confirmed that they were satisfied that the remote hearing was conducted fairly and they had no concerns whatsoever. There were some technical challenges over the course of the day but these were negotiated and resolved to the parties' and my satisfaction. After hearing submissions I reserved my decision which I now provide with reasons.

Legal framework

17. The applicable legal test was not in dispute and the relevant legal framework can therefore be succinctly stated. AM (Zimbabwe) (supra) marks an important departure from the previous position pursuant to D v UK (1997) EHRR 423 and N v UK (2008) 47 EHRR 39. The proper test is now whether return would lead "*to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy*". That is to be read together with the second category, beyond deathbed cases, identified in Paposhvili v Belgium [2017] Imm AR 867 namely those which "*although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible*

decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy.”

18. At [23] of AM (Zimbabwe) the Supreme Court summarised the evidential approach, as adopted in Paposhvili, namely:

“(a) in para 186 that it was for the applicants to adduce before the returning state evidence “capable of demonstrating that there are substantial grounds for believing” that, if removed, they would be exposed to a real risk of subjection to treatment contrary to article 3;

(b) in para 187 that, where such evidence was adduced in support of an application under article 3, it was for the returning state to “dispel any doubts raised by it”; to subject the alleged risk to close scrutiny; and to address reports of reputable organisations about treatment in the receiving state;

(c) in para 189 that the returning state had to “verify on a case-by-case basis” whether the care generally available in the receiving state was in practice sufficient to prevent the applicant’s exposure to treatment contrary to article 3;

(d) in para 190 that the returning state also had to consider the accessibility of the treatment to the particular applicant, including by reference to its cost if any, to the existence of a family network and to its geographical location; and

(e) in para 191 that if, following examination of the relevant information, serious doubts continued to surround the impact of removal, the returning state had to obtain an individual assurance from the receiving state that appropriate treatment would be available and accessible to the applicant.”

19. The correct approach was further clarified at [32] as follows:

“...The threshold, set out in para 23(a) above, is for the applicant to adduce evidence “capable of demonstrating that there are substantial grounds for believing” that article 3 would be violated. It may make formidable intellectual demands on decision-makers who conclude that the evidence does not establish “substantial grounds” to have to proceed to consider whether nevertheless it is “capable of demonstrating” them. But, irrespective of the perhaps unnecessary complexity of the test, let no one imagine that it represents an undemanding threshold for an applicant to cross. For the requisite capacity of the evidence adduced by the applicant is to demonstrate “substantial” grounds for believing that it is a “very exceptional” case because of a “real” risk of subjection to “inhuman” treatment. All three parties accept that Sales LJ was correct, in para 16, to describe the threshold as an obligation on an applicant to raise a “prima facie case” of potential infringement of article 3. This means a case which, if not challenged or countered, would establish the infringement: see para 112 of a useful analysis in the Determination of the President of the Upper Tribunal and two of its senior judges in AXB v Secretary of State for the Home Department [2019] UKUT 00397 (IAC).”

20. Savran v Denmark (57467/15) also makes it clear that the authorities must consider the extent to which the individual in question will *actually* have access to this care and these facilities in the receiving State.

Assessment of the evidence

Witnesses

21. The appellant's evidence was unreliable in significant respects. I do not accept his claim at the hearing that he has recently become estranged from Amran, his brother in Pakistan and no longer had any contact with him. During the course of cross-examination, the appellant repeatedly gave inconsistent explanations with associated implausible timeframes. At first, he claimed that his brother stopped talking to him when he found out that he was returning to Pakistan. When Mr Anderson pointed out that this was inconsistent with his written evidence, the appellant changed his reasoning to a falling out over the brother's daughter's wedding. When it was further pointed out that this was inconsistent with his own most recent statement, he simply repeated that his brother does not speak to him and transferred their parents' home to his sole name (when that was a matter the appellant referred to at [9] of his most recent statement at the same time as saying that they did speak but not at length). In addition, I note that in his statement dated 9 December 2012 the appellant explained that he had not mentioned his brother and sister in Pakistan before because he had no contact with them. That assertion is difficult to reconcile with the appellant's evidence at the hearing that when they were alive, he visited his parents in Pakistan, who lived in the same house as his brother and his family.
22. The appellant maintained in his evidence that he was completely incapable of any physical activity whatsoever. He was supported in this assertion by some of his family members. For example, his daughter Samara stated that he "*cannot do anything for himself*". This is inconsistent with his own claim to have cleaned at the mosque and the reference to the appellant as a 'self-caring patient' – see the letter dated 5 December 2019 from clinical nurse Merlin Tonio at the Newport Renal Unit. I entirely acknowledge that the undisputed medical evidence describes wide-ranging and serious medical conditions which must have an inevitable impact on the appellant's day to day activities. I am nonetheless satisfied that the appellant, his sister Perveen, his son Mohammad Mothansun and his daughter Samara have substantially embellished the nature and extent of the care that is said to be necessary. Perveen said in her statement that she has cared for him "*almost 24 hours a day*". That is not corroborated by any independent evidence and is inconsistent with the appellant being a 'self-caring patient'.
23. In addition, the appellant was adamant and uncompromising that his family members in Pakistan would not support or accommodate him and his family members in the UK would be unable to provide him with any financial support. I do not accept these assertions, which were full of contradictions and inconsistent with the preponderance of the evidence available to me. I am satisfied that the

appellant has been and remains an integral part of a close and loving extended family. They have continued to support him through very difficult times (including after his release from lengthy imprisonment for drugs offences and during an extended period of serious ill-health). The suggestion that this would cease upon the appellant's removal to Pakistan is not a credible reflection of the various and multi-layered longstanding family relationships that he has benefitted from emotionally, practically and financially.

24. In his affidavit Amran asserted that he was living in Arifwala with his widowed disabled sister, who he had to take care of. In his own statement dated 9 December 2019, the appellant addressed his relationships with his siblings in Pakistan and their respective circumstances. He stated that Shagufta was a widow and earned a living sewing clothes. He repeated this assertion in his statement dated 30 November 2020 in which he claimed that he would have no family support in Pakistan because his brother had to support his wife and children, and "*our widowed sister Shagufta*". During cross-examination the appellant admitted that he did not have a sister who was a widow in Pakistan and that Shagufta was married to Iftikhar, and they lived together in a different house to his brother. This calls into question the circumstances of the appellant's brother and sister, as described in his most recent witness statement. I am satisfied that the appellant and his brother have sought to deliberately engineer a false impression of the true family situation in Arifwala, to support a claim that the appellant would be unable to obtain any support or accommodation from family members there. I am satisfied that the appellant deliberately sought to paint an inaccurate picture of his family's circumstances in Arifwala in order to disguise the fact that his brother and sister would both be able to offer him basic support and accommodation.
25. In any event, having heard evidence from witnesses including Iftikhar, I am satisfied that Shagufta and Iftikhar would be able to support and accommodate the appellant at their home in Arifwala. They have no dependents. When given evidence Iftikhar did not deny that they could not offer basic accommodation and support but said that it would be "*very difficult*", without explaining this clearly or credibly. I invited Iftikhar to explain why he would be not be able to support the appellant with the assistance of remittances from family members in the UK. He was unable to answer that question and simply said that the appellant should remain in the UK, where he could be better supported. Shagufta is a housewife with no known medical conditions that would prevent her from offering the appellant practical and emotional support. I am satisfied that with the support of her sister Perveen, she would be able to provide similar basic support to the appellant i.e. accommodation, cleaning, assistance with medication and cooking (including any adapted diet). When she gave her evidence, Perveen highlighted that it would be "*better*" for the appellant to remain in UK because she knew what he did and what he ate. She was unable to explain why she could not explain these matters to Perveen or other family members in Pakistan beyond saying that they did not have much contact.

26. I am also satisfied that the appellant's close family members in the UK would be able to collectively send sufficient funds to the appellant in Pakistan to enable him to pay for his food, board with family members, travel expenses as well as any necessary medical expenses. The blanket assertion by the appellant and his children that he will have no money and no one to support him in Arifwala is entirely inconsistent with the evidence of comprehensive (including financial) and long-standing support dating back to around 2011, after the appellant was released from prison and diagnosed with renal failure. As set out in his three statements, the UK family members have supported the appellant since his release from prison and after he was served with a deportation order (which meant that he was not permitted to claim public funds or work).
27. I do not accept Samara's evidence that she would be unable to continue to afford the £30-40 monthly payment she said she has been giving to her father. When pressed on this issue by Mr Anderson, she claimed that she would not be able to send such a small amount by money transfer. She was entirely unable to explain why she could not send the equivalent monthly sum every three months. I note that Samara has been regularly providing the appellant with money for some time (see page 66 of the bundle). She and her husband continue to work. Although they have their own commitments including a mortgage and four children (with one on the way), they have demonstrated an ability and willingness to financially support the appellant in the past and this can continue.
28. According to their own letters in support of the appellant, the appellant's two sisters in the UK, Perveen (page 73) and Nasreen (page 60), his son Mohammed Mothansun (page 71) and his other daughter Aleema Khan (page 68) have also been contributing regularly to financially supporting the appellant. Indeed, the appellant made it clear in his statements that he has had no financial incentive to return to drugs because he is amply financially supported in the UK by his relatives. I note that Perveen is in receipt of Universal Credit and not working but she has been providing the appellant with his food and lodging since his release from prison (see [19] of the appellant's statement dated 9 December 2019 and [3] of her statement dated 2 December 2020). She would therefore have access to the funds usually set aside for the appellant's food to send to Pakistan. I bear in mind Mohammed Mothansun's evidence that he has been furloughed and has reduced the amount that he can provide (from £20-30 to £5-10), but he agreed that he would still be able to provide something. The appellant also agreed that his son Mohammed Adam worked in a takeaway from time to time. It is difficult to see why he could not contribute a small monthly amount. Adopting a conservative approach, the family members in the UK should be able to collectively remit at least £80 per month to the appellant: Samara £35; Aleena £5; Mohammed Mothansun £10; Mohammed Adam £5; Perveen £15; Nasreen £10. It is well known and was accepted by Mohammed Hussain during the course of his evidence that the cost of living is much lower in Pakistan than the UK. A modest income of £80 per month, would go much further in Pakistan than it would do in the UK.

Medical evidence

29. The respondent accepted that the appellant's end stage renal failure is such that he needs thrice weekly dialysis and that without this he will die. The appellant's treating physicians have also highlighted his other health difficulties as set out in the more recent evidence. The respondent submitted that it is only the evidence in respect of the need for dialysis that comes close to engaging Article 3, and that if dialysis is available and accessible, none of the other matters relied upon could plausibly suffice. Although the appellant has focused attention upon the unavailability and inaccessibility of dialysis in the main, in my judgment it is important to assess the appellant's medical conditions holistically, when considering both the availability of treatment to obviate a breach of Article 3 and this appellant's ability to access that treatment, and I confirm that I have done so.
30. The medical evidence that the appellant is unable to miss even one dialysis treatment without risking sudden death is, as submitted on his behalf, stark, serious and specific. By contrast the remainder of the medical evidence is less stark and lacking in detail. I accept that the appellant's general health, beyond his need for dialysis, is poor. This includes comorbidities linked to his kidney disease as well as other matters including ongoing significant chest disease and depression. However, aside from the appellant's own assertions as to his need for regular reviews, the available medical evidence is limited and only set out in the form of short updating letters. These have understandably focused upon the need for thrice weekly dialysis, without which there is a risk of sudden death. However, there has been no meaningful attempt by any medical expert to comprehensively address with a degree of precision the nature and extent of the range of treatment and support received in the UK or the extent to which the facilities, treatment and support available to him in Pakistan would be insufficient to avoid a serious rapid and irreversible decline in his state of health. In addition, on behalf of the appellant, there has been no meaningful attempt to engage with the matters set out below:
- a) the necessity or extent of oversight or reviews required by a nephrologist, in addition to the thrice weekly dialysis;
 - b) the nature and frequency of adjunctive treatment required for renal-related anaemia and bone disease (Dr Meran referred to this treatment being in the form of medication; Dr Thwin's letter was silent on the nature of the treatment; in any event Ms Williams did not suggest that the relevant medication was unavailable in Pakistan);
 - c) the frequency of reviews by the chest team (Dr Thwin noted that "*his ongoing significant chest infections have been reviewed by the Chest team*" but whilst Dr Ionescu made reference to a general review at the beginning of January 2021, there was no clear reference to ongoing regular reviews; in addition, Dr Thwin highlighted that arrangements would need to be made for the appellant to receive regular dialysis, were he to travel to Pakistan but does not clearly set out what his chest condition would require in Pakistan);

- d) the extent to which the additional diagnoses require oversight or reviews (by way of example, Dr Meran noted in December 2019 that the appellant required ongoing input from the vascular access team but there is no clear reference to ongoing reviews in Dr Thwin's more recent letter which states that he "*has been under review by the vascular access team*" and in any event there has been no attempt to suggest that any necessary reviews could not take place in Pakistan);
 - e) the extent to which the appellant requires a carer when fatigued the day after dialysis treatments (although Perveen has described herself as the appellant's carer and Mohammad Mothansun said that they did "*everything*" for him, this is unsupported by independent evidence);
 - f) the appellant's current life expectancy or any change to this once in Pakistan aside from the consequence of not having access to the necessary dialysis treatment (Dr Thwin only refers to surviving for "*a certain period*" and Dr Ionescu refers to a poor prognosis);
 - g) why he is transferred to hospital by ambulance and whether that can be replaced by a taxi service (there is no medical evidence to support any claim that only an equipped ambulance will suffice for transport services particularly in the light of the appellant's own evidence that he has been able to help out at the Mosque by laying out food, preparing accessories and cleaning the toilets; in addition the appellant's evidence that he cannot travel alone sits uneasily with him being a 'self-caring' patient able to help out in the Mosque in the manner he has claimed);
 - h) although it is said the appellant suffers from 'severe depression' there is no psychological / psychiatric evidence to support this diagnosis (I note that the appellant's claim to have been suffering from depression since 2012 and to have suicidal ideations in his statement dated 9 December 2019 has not been supported by any independent evidence. In addition it was no part of the case put forward on behalf of the appellant that he is at risk of suicide if returned to Pakistan);
 - i) the costings of the medication (including suitable alternatives to the list of medication in the appellant's bundle) and treatment (other than dialysis) required in Pakistan to support the appellant's blanket assertion that this would be completely unaffordable, even with the financial assistance of family members.
31. Notwithstanding the above omissions, I accept that the appellant suffers from very poor ill-health as described in the medical evidence. I also accept that in addition to dialysis he requires medication for his other conditions and other treatment from time to time. In my judgment that in itself is insufficient to raise a 'prima facie case' of potential infringement of Article 3. A prima facie case means a case which, if not challenged or countered, would establish the infringement. In order to establish

infringement the appellant needs to demonstrate that the treatment he requires is both unavailable and inaccessible to him in Pakistan. I now turn to these matters.

Availability

32. I am satisfied that when the country background evidence is considered as a whole, there is sufficiently cogent evidence that thrice weekly dialysis would be available without charge to the appellant in Arifwala.
33. Ms Williams submitted that the CPIN report is the starting point for my enquiry. At [4.19.4] this refers to a MedCOI response, dated 25 July 2019, which in turn quotes from a 2016 news article containing the following:

“Depending on public or private sector, each session dialysis would cost between PKR 3,000 and 5,000. The article further states that there is a demand and supply gap regarding dialysis treatment in public hospitals. An endocrinologist at the Pakistan Institute of Medical Sciences in Islamabad has said that ‘Pakistan needs half a million machines to meet the need but sadly, there are only 19,000 machines in the country.’ The machines become overused and abused which affects their efficiency. In addition there are less than 200 trained and qualified nephrologists for a population of more than 180 million in the country.”

34. The MedCOI response goes on to state that *“according to a 2016 research report, only 10% of patients in Pakistan needing dialysis receive this treatment due to the enormous cost of the therapy and that patients commonly reduce the dialysis frequency because of the lack of financial resources”*. This is of course not an option for this appellant because the undisputed medical evidence suggests that merely missing one dialysis session renders him at risk of sudden death. However, the MedCOI response goes on to state that free dialysis is available to those unable to pay for it in certain parts of Pakistan, with examples of hospitals provided in Lahore and Karachi. The COIS also notes the general inadequate healthcare in Pakistan and that this has been exacerbated by the pandemic.
35. The COIS report clearly paints a gloomy picture of the availability of dialysis for much of the population in Pakistan albeit acknowledges that in certain parts free dialysis is available. The latter point is supported by evidence from the Noor Foundation that dialysis is provided for free at 20 locations within Pakistan, including the hospital in Arifwala. In response to the respondent’s specific requests for information regarding dialysis provision in or near Arifwala, the relevant Office of the Medical Superintendent confirmed the following in March 2021, in relation to Pakpattan (about 22 miles from Arifwala):

“6 dialysis machines in the main building and another set up of Dialysis Centre by the name of Asim Wahid Cardiac & Dialysis Centre within DHQ Hospital Pakpattan premises which operates 10 Dialysis Machines. Both of these facilities have waiting listed of around 20 patients at any given time but the patients are provided regular dialysis facility according to the required standards.”

And in relation to Arifwala:

“10 Dialysis Machines in the main building which are working in both shift (Morning, Evening), 20 patients are being facilitated per day and 40 patients are in waiting list for dialysis”.

36. The reference to waiting lists in the above extracts were clarified in a letter from the British High Commission in Islamabad dated 29 March 2021, as follows:

“The patients described as on a waiting list are the number of patients who are currently receiving dialysis treatment at the facilities. They are outpatients who regularly receive treatment on a specified date provided to them, at their last appointment. Occasionally there are more patients listed for treatment on the same date, which results in some patients waiting for a couple of hours to receive the treatment.

The information provided is not indicative of a list of persons who are awaiting dialysis due to a lack of available spaces for treatment.”

37. In addition, the High Commission sought information as to the rates for dialysis at a nearby private hospital to Arifwala with the following result: The Ahmed Health Complex in Pakpattan is a private hospital and has 20 units of dialysis that are running double shifts to accommodate as many patients as possible. They charge Rupees 400 (£ 2) per session of dialysis, a subsidised rate funded by charities. There is a waiting list but they prioritise patients from the local areas.
38. Ms Williams urged me to approach the information as to the availability of dialysis in or near to Arifwala with a degree of caution, given the general inadequacies in the healthcare provision in Pakistan. I confirm that I have done so. However it is important to note that the CPIN acknowledges that free dialysis is available in some parts of Pakistan. In order to begin to establish his *prima facie* case the appellant needed to demonstrate *inter alia* that contrary to the information I have set out above, dialysis is not available without charge in Arifwala. The appellant has not adduced any credible evidence from a reliable source in this regard. He relied upon evidence from his brother-in-law and brother but their evidence was unreliable. The appellant claims that he asked his brother to check the hospital and how it operates, and that the general view is that dialysis is only available as long as the government provides the machines, and that there is no guarantee he would be accepted for treatment. I do not accept this evidence. It is based upon rumour and hearsay. The statement of the appellant’s brother to the effect that dialysis is not even available is plainly wrong. In any event the brother did not attend the hearing in order to be cross-examined and his written evidence is unreliable for the reasons I have already provided. Iftikhar gave evidence that the dialysis ward of the Arifwala hospital was locked but was unable to credibly explain how he was able to discern this. I am satisfied that the evidence relied upon by the appellant which is said to undermine the clear and particularised evidence regarding free dialysis availability in Arifwala is vague and contrary to official information.
39. The specific evidence relied upon by the respondent clearly and cogently demonstrates that free dialysis would be available to the appellant at a hospital in

Arifwala and alternatively nearby in Pakpattan. Should there be difficulties from time to time, this could be supplemented by the private hospital at a modest cost. This evidence is credible, sourced and specific. When the COIS is read carefully it is not inconsistent with this, because the COIS acknowledges that there is free dialysis in certain parts of Pakistan.

40. I bear in mind that dialysis is unlikely to be the only treatment the appellant requires. He will also need medication and treatment for his various conditions. In this respect I note the letters from the appellant's treating physicians and his list of medication (pages 82-89 of the bundle). These may be more difficult to access in Pakistan but it was not disputed that such treatment would be available to the appellant in Arifwala.

Accessibility

41. I must also consider the extent to which the appellant will actually have access to the available treatment he requires. I must consider all the relevant circumstances, including *inter alia*, the cost of medication and treatment, the existence of a social and family network, and the distance to be travelled in order to have access to the required care.
42. The appellant will be able to access free dialysis in Arifwala. If there are sporadic difficulties with free access in Arifwala, the appellant has the alternative of travelling to Pakpattan or accessing the private hospital in Arifwala. There has been no serious attempt to demonstrate that the other medication he requires or suitable alternatives are particularly expensive. It is noteworthy that although the appellant has chronic and longstanding conditions there was little evidence that he required inpatient treatment apart from relatively recently in December 2020, albeit no real detail was provided about this.
43. As to the question whether the appellant will have access to family support, the FTT's preserved findings note that he will. Notwithstanding this, I have considered the issue for myself given the more up to date evidence available to me, including further statements and oral evidence. I am satisfied, for the reasons I have already provided above, that the appellant is likely to have the day-to-day practical support of his family members in Pakistan, who can provide him with board and lodging in Arifwala. He is also likely to have the financial support of his family members living in the UK, and collectively they will be able to afford to regularly provide him with not insignificant funds, in the context of Pakistan.
44. Iftikhar and Shugufta live about 1km from the Arifwala hospital. The appellant's brother also lives nearby in Arifwala. I do not accept his evidence or the evidence of the appellant and the remainder of the family members that the appellant would receive no help from his family members in Pakistan, who would be unable to accommodate him. Iftikhar entirely avoiding my attempt to clarify why it would be so difficult to accommodate and support the appellant with the assistance of remittances from the UK.

45. The need for transportation would be minimal. Although the appellant suffers from various comorbidities there is no medical or other reason why he must travel by ambulance and cannot use taxi services, paid for by family in the UK. I accept the evidence that the appellant suffers from exhaustion the day after each dialysis treatment but there is no credible reason why the support provided by his sister in the UK cannot be replicated by family members working together with financial support from the UK.
46. The appellant's prognosis is uncertain. When the medical evidence is read holistically, I am satisfied that there is no prospect of any of the appellant's conditions improving and the focus has inevitably been upon managing his conditions, without any expectation of improvement beyond the short-term, for the period he has remaining. As Dr Thwin put it: *"There is no chance of his health condition improving but he will survive for a certain period by continuing his current dialysis regimen treatments."* Dr Thwin described the prognosis of the chest condition as poor, and that any improvements as *"short lived"*. I note that in his statement dated 30 November 2020 the appellant claims he was given five years to live and has been on dialysis for 10 years. The appellant has stated that his life has been prolonged because of the care and support he gets in the UK but there is no independent evidence in support of this.
47. The appellant's likely life expectancy remains uncertain. However his medical history suggests that with continued access to *"his current dialysis regimen treatments"* he will be able to survive well beyond the short term. This is therefore not a case in which it can be said that the appellant has a defined limited short period left to live or a defined even shorter life expectancy in Pakistan. Rather, provided he is able to access dialysis and the medication required for his kidney disease and chest condition, the prognosis seems to be that he will be able to survive for an unknown period. That applies just as much to Pakistan as it does in the UK.
48. Having viewed all the evidence in the round, I am satisfied that the appellant will have the benefit of the support, both financial and emotional, of his family members in the UK, as well as the support of family members in Pakistan. Dialysis would be both available and accessible to the appellant in Arifwala. Adhoc medical expenses can be met by remittances from the family in the UK. The appellant and his family members have accepted that he has a limited time left (albeit that period is uncertain). This means that the need to send remittances will not be for an indefinite period. Given the evidence as to availability of treatment together with support in Arifwala, combined with financial support from the UK, the appellant has not displaced the initial burden in this case. I do not accept that the appellant's removal would lead to a serious, rapid and irreversible decline in his state of health resulting in intense suffering or to a significant reduction in life expectancy. I do not accept that arrangements cannot be made by the appellant working together with his family members, given the facilities in Arifwala, so as to ensure there is no risk of missing a single dialysis session, including shortly after his arrival in Pakistan and bearing in mind the challenges posed by the pandemic. I have

carefully considered the likelihood of the appellant's treatment being interrupted but there are a number of protective mechanisms available to him: three possible hospitals in easy travelling distance; many family members in Pakistan and the UK available to assist; financial backing from family members in the UK; the appellant is experienced in looking after himself with the support of family members, having been ill for an extended time, during which time he has been entirely compliant with his treatment.

49. I accept Mr Anderson's submission that the appellant has been unable to place reliance upon sufficient cogent country background, medical or other evidence to establish a prima facie case. I have no serious doubts surrounding the impact of removal and in the circumstances there was no obligation on the part of the respondent to seek an individual assurance from the government of Pakistan.
50. I am satisfied that whilst the appellant may have a more comfortable standard of living in the UK including more fulfilling relationships with his children and grandchildren, his return to Pakistan would not breach Article 3. I am not determining whether the appellant's removal would breach Article 8 because that has already been finally decided by the FTT. The threshold for a breach of Article 3 by removing a person to their state of origin remains a high one. In the circumstances of this case, there is sufficient evidence as to the availability and accessibility of dialysis and other treatment together with family support in Arifwala, such that removal to Pakistan would not give rise to a real risk of a breach of Article 3.

Fitness to fly

51. It has not been submitted on behalf of the appellant that travelling to Pakistan would breach Article 3. In any event such a submission is currently unsupported by the medical evidence. Dr Thwin stated that in her opinion the appellant is not fit to fly without offering any detailed reasons for this. Dr Ionescu observed that, from a lung point of view, his fitness to fly would need to be assessed close to the time of departure. The Appellant's fitness to fly would be assessed as part of the removal process and, if necessary, he would be provided with the appropriate medical escorts.

Conclusion

52. The appellant's removal to Pakistan would not give rise to a breach of Article 3 of the ECHR.

Decision

53. The appellant's appeal is dismissed on human rights grounds.

Signed: *Ms Melanie Plimmer*

Upper Tribunal Judge Plimmer

Dated: 28 April 2021