



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

Appeal Number: HU/14467/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House

On 20th September 2022

**Decision & Reasons
Promulgated
On 26th May 2022**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

**RS
(ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Slatter of Counsel, instructed by Majestic Solicitors Ltd

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals with permission against the decision of First-tier Tribunal Judge White promulgated on 31 December 2020, in which the Appellant's appeal against the decision to refuse his human rights claim dated 16 August 2019 was dismissed. An anonymity order is made in this case in light of the Appellant's mental health and history.

2. The Appellant is a national of India, born on 5 June 1969, who first arrived in the United Kingdom on 20 September 2003 and claimed asylum the following day on the basis that he was at risk on return to India from a land dispute there. The Respondent refused that claim on 28 September 2003 and his appeal against refusal was dismissed on 18 November 2003; following which the Appellant became appeal rights exhausted. The Appellant made further submissions on 17 July 2018 and an application for leave to remain was made on 9 May 2019 on the basis of suffering from stress, depression and anxiety following being stabbed in the neck on 28 January 2017 and ongoing fear for his safety both in the United Kingdom and on return to India.
3. The Respondent refused the application on the basis that the Appellant had no family life in the United Kingdom and did not meet the requirements for a grant of leave to remain on the basis of private life under paragraph 276ADE of the Immigration Rules. The Respondent considered the Appellant's mental health, in particular anxiety, depression and suicidal ideation following a serious assault in 2017 but concluded that there was no objective fear on return to India, medical treatment was available there and there was therefore no breach of Article 3 of the European Convention on Human Rights.
4. Judge White dismissed the appeal in a decision promulgated on 31 December 2020 on all grounds. The appeal was considered on human rights grounds under Articles 3 and 8 of the European Convention on Human Rights, although given the Appellant's belief that the attack upon him in the United Kingdom was somehow linked to his original asylum claim to be at risk on return to India because of a land dispute, there was consideration of whether there was an objective risk on return to India (this in any event being relevant to the Article 3 assessment). The First-tier Tribunal considered the Appellant's previous appeal in 2003 and applying the principles in *Devaseelan* together with the later evidence available, concluded that there was no objective risk on return to India for the Appellant by reason of the claimed land dispute or otherwise. It was found that there was no link between the asylum claim and the attack in the United Kingdom in 2017, which was more plausible and more likely to be because the Appellant was suspected of being in a relationship with the girlfriend of one of the attackers.
5. The First-tier Tribunal refers to the medical evidence available from the Appellant's GP in paragraph 18 of the decision, including specific letters, but that the GP notes are not available; such that there was a lack of evidence as to what support the Appellant has received from his GP beyond a referral for counselling and prescriptions for mirtazapine and a lack of formal diagnosis of PTSD. The First-tier Tribunal refers to and discusses the report from Ms Pagella in paragraphs 19 to 24 of the decision, noting a lack of detail in places, a failure to have been referred to previous Tribunal findings and therefore failure to consider whether there was an objective basis for the claimed fear on return to India,

inconsistency in the assessment of risk of suicide and a lack of consideration of potential family support on return to India.

6. In relation to Article 3, the First-tier Tribunal found that on the evidence before it, the Appellant had not established that there was a real risk of suicide on return due to fear of hostility in India and therefore the high threshold for such a claim was not met and there was no requirement for any further investigation or evidence from the Respondent as to treatment available on return to India.
7. In relation to Article 8, the Appellant was not able to meet any of the requirements of the Immigration Rules for a grant of leave to remain and much of the reasoning in relation to the Article 3 claim was relevant here. Overall, the Appellant's removal would not be a disproportionate interference with his right to respect for private life.

The appeal

8. In the written application for permission to appeal, the Appellant appeals on four grounds as follows. First, that the First-tier Tribunal materially erred in law in finding that there was no breach of Article 3 on the evidence before it. Secondly, that the First-tier Tribunal materially erred in law in failing to consider in full the evidence from the Appellant's GP. Thirdly, that the First-tier Tribunal materially erred in law in failing to properly take into account Paposhvili v Belgium [2017] Imm AR 867. Finally, that the First-tier Tribunal materially erred in law in undertaking only a narrow consideration of the expert report before it.
9. Immediately prior to the oral hearing, the Appellant made an application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce further evidence, namely an addendum report from Ms Pagella which was not before the First-tier Tribunal and was said to respond to criticism of her first report in the decision under challenge. The written application was on the basis that this further report was relevant to the issue of whether the First-tier Tribunal's decision contained an error of law, although at the oral hearing, Mr Slatter confirmed that the further report was not necessary for this. However, the further material was said to show that the First-tier Tribunal was mistaken on its reading of the original report and was not justified in attaching no weight to the diagnosis of PTSD given in it.
10. I refuse to admit the further evidence relied upon under rule 15(2A) on the basis that it is not and can not be relevant to the issue of whether the First-tier Tribunal made an error of law requiring the decision to be set aside. The report was not before the First-tier Tribunal and is an addendum report to update the earlier assessment following a further interview with the Appellant on 17 June 2021. These events significantly post-dated the hearing and decision in this appeal and can not therefore be material to whether there was an error in it. The further report could

only be adduced in evidence and be relevant to any re-making of this appeal if the First-tier Tribunal decision is set aside for error of law.

11. At the oral hearing, Mr Slatter submitted that there were three grounds of appeal pursued, the first two in relation to Article 3 and the availability of healthcare, the third in relation to Article 8.
12. Mr Slatter submitted that the First-tier Tribunal failed to properly apply the principles, specifically the fifth principle in J v Secretary of State for the Home Department [2005] EWCA Civ 629 as modified in Y (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362 and confirmed as continuing to apply following AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 by the Upper Tribunal in MY (Suicide risk after Paposhvili) [2021] UKUT 00232 (IAC). The First-tier Tribunal found that the Appellant's fear on return to India was not objectively well-founded, but it is unclear as to what if any weight was given to his genuine subjective fear on return, which the expert had referred to as 'internalised' fear.
13. In relation to the First-tier Tribunal's criticism of Ms Pagella's report because she was unaware that the Appellant had already been found not to have an objective fear on return to India, Mr Slatter submitted that this was not relevant first to the PTSD diagnosis and secondly, in any event because of the qualification in Y that subjective fear is in any event still relevant to the assessment of risk of suicide. There was evidence before the First-tier Tribunal from the expert and the Appellant's GP as to his fear of violence in India due to the claimed land dispute. Overall, the First-tier Tribunal had not properly directed itself in relation to the report and the risk of suicide and in any event had not given adequate reasons for the decision.
14. As to the other specific criticisms made of Ms Pagella's report by the First-tier Tribunal, it was submitted as follows. The criticism in paragraph 18 that Ms Pagella had failed to identify the source of the Appellant's suicidal ideation was unjustified as it was obvious that this was a matter of her own assessment. The criticism in paragraph 19 that there were inconsistencies about the Appellant suffering from PTSD were not justified on the available evidence and overall it was wrong to find that there was no actual diagnosis of PTSD which was contained in Ms Pagella's report. Further, that the criticism of changes in language throughout the report was not justified as a reason to reject the report as a whole or attach little weight to it, any perceived changes had been taken out of context. Finally, there was a lack of reasons given by the First-tier Tribunal as to why the report failed to establish the threshold for a prima facie case requiring further action by the Respondent; the reference to multiple frailties being simply insufficient.
15. Mr Slatter also submitted that the First-tier Tribunal failed to properly take into account the evidence from the Appellant's GP in paragraphs 18 and 28 of the decision. That evidence identified the Appellant's condition as

chronic, that it had not been improved by medication and that it had an impact on his daily life.

16. The final ground of appeal is that the decision was contrary to Article 8 of the European Convention on Human Rights given the unjustifiably harsh consequences on the Appellant's private life established in the United Kingdom and very significant obstacles to his reintegration in India; on the basis that there was a lack of adequate reasons for the appeal being dismissed on this basis. It was accepted on behalf of the Appellant that if there was no breach of Article 3 or error of law on this basis, it was unlikely that Article 8 could take matters much further; but Mr Slatter submitted that if Ms Pagella's report carried some weight, it should be taken into account for the purposes of the Article 8 assessment.
17. On behalf of the Respondent, Ms Everett identified that the task of the First-tier Tribunal in this case was initially to determine whether the Appellant had demonstrated substantial grounds for risk of suicide. The decision identifies entirely fair criticism of the report by Ms Pagella because it was written on the basis of a credible claim and objective fear on return to India (which is not the case) and that is relevant even to the diagnosis of PTSD because there was no assessment of whether the subjective fear was valid in circumstances where there is was no understanding of the rejection of an objective basis for the fear. It is of course possible for a person to have a legitimate subjective fear and that must be assessed. On the facts of the present case, the Appellant's claim was found not to have happened at all and have been entirely fabricated, such that it was insufficient for Ms Pagella to have accepted fear on return and diagnosed PTSD when assessing the circumstances in the round. It was entirely lawful for the First-tier Tribunal to find that there needed to be more detailed consideration of these factors within the report for it to be reliable.
18. Overall, the findings made by the First-tier Tribunal were lawfully and rationally open to it on the evidence in relation to the Article 3 claim and if there is no error in that part of the decision, there is no separate error in the dismissal of the Article 8 claim as notwithstanding the length of the Appellant's residence in the United Kingdom, given that there are no very significant obstacles to his reintegration in India.

Findings and reasons

19. The grounds of appeal in this case have been framed somewhat differently between the written grounds and oral submissions, in this decision I deal with the three issues pursued at the hearing in turn. First, the First-tier Tribunal's assessment of Ms Pagella's report; secondly the assessment of the GP evidence and finally the Article 8 consideration. It was accepted by both parties at the hearing that this was not really a case about AM (Zimbabwe) or Paposhvili but more a straightforward case of whether the principles in J, as modified in suicide cases, were properly applied by the First-tier Tribunal.

20. The grounds of appeal in relation to the Tribunal's assessment of Ms Pagella's report contain a number of specific issues as well as overall a lack of reasons for rejecting the evidence, the latter on the basis of the evidence suffering from 'multiple frailties'. There is nothing of substance in the appeal as a reasons challenge, the multiple frailties referred to in paragraph 26 of the decision are 'as discussed above' and self-evidently refer to the detailed consideration of the report in paragraphs 19 to 25. The issue can only be whether those reasons were a rational assessment of the evidence.
21. The Tribunal correctly identify in paragraph 20 of the decision that Ms Pagella had not been provided with a number of relevant documents, including the previous refusal letters and it being unclear as to what medical documents she had been provided with, including whether she had been provided with any GP records. For the reasons recently given by the Upper Tribunal in HA (expert evidence, mental health) [2022] UKUT 00111, the lack of GP records is an important consideration affecting the assessment by Ms Pagella and the Tribunal's assessment of her evidence.
22. Whilst it is the case that subjective fear is also relevant to the assessment of the risk of suicide and for the purposes of Article 3, whether or not there is an objective fear is relevant to a professional's assessment of an individual and in particular the likely risk of suicide. On the facts of this particular case, it was entirely appropriate to note that Ms Pagella accepted the whole of the Appellant's account as both rational and genuine (in paragraph 23) and her report proceeds on that basis only and it does not contain an assessment of or based on subjective fear alone. The sole reference near the end of the report to the Appellant having 'internalised' the fear falls short of a sufficient assessment in this regard. It was open to the Tribunal to conclude that less weight could be attached to the report which proceeded on a basis contrary to previous appeal findings and without any consideration of the same.
23. The Tribunal noted in paragraph 19 of the decision that Ms Pagella stated the Appellant had expressed suicidal ideation but did not make clear the source of this information or when it had occurred. That is a fair reflection of the evidence and it cannot be said that it was obviously a matter of her own assessment - the report was clearly recording information from the Appellant but lacked the detail of what had been said. In the 'psychological profile' section of the report, it is recorded that the Appellant stated that he "... sometimes feels suicidal and have thoughts how I would do it ..." going on to give an example. The report does not however record the frequency of such thoughts, the time period over which the Appellant has had them, whether the thoughts were specifically linked to removal or his general situation in the United Kingdom following the attack and therefore lacks significant detail relevant to Ms Pagella's later conclusions on risk.
24. The Tribunal also raised concerns about the language and assessment in Ms Pagella's report has containing increasing risk as the report went on,

moving from an early assessment of *“any removal may result in his psychological breakdown”*; to a later statement that in the event of removal *“it is likely that his mental state may deteriorate even further leading to possible suicide”*; to a final conclusion, *“that in the event of [A] being informed of a return to India, that he would most probably attempt suicide whilst within the UK. In the event of this not being achieved and a return were actuated, I believe he would try again in situ on arrival.”*. The report is not consistent, contains no explanation for the differing statements on likely impact of removal and fails entirely to give any reasons for the ultimate conclusion or assessment of risk. As noted by the Tribunal, there is no consideration at all as to potential support to the Appellant in India, including from immediate family members there. Again, it was entirely open to the Tribunal to question the value of such evidence for these reasons when assessing the weight to be given to it. There is nothing to suggest the statements or report as a whole was taken out of context or that changes in the language and assessment were not important or relevant.

25. Ms Pagella’s report is also inconsistent or at least unclear as to whether the Appellant has PTSD, as noted by the Tribunal in paragraph 19 referring to the statements on this being too sweeping and in paragraph 20 noting that that PTSD is described as both a possibility and a fact. The report itself refers in different places to the Appellant’s presentation being ‘consistent with’ PTSD; that the Appellant is suffering from PTSD; and that the Appellant appears to be suffering from ‘features of Post Traumatic Stress Disorder’. There is no clear diagnosis and as above and below, no GP notes or other medical evidence as to whether the Appellant has been diagnosed with PTSD or not. Again, it was entirely open to the Tribunal to note the differences in the report, the lack of detail and to find this relevant to the weight to be attached to it as a whole and as to the assessment of suicide risk.
26. I find no error of law in the Tribunal’s approach to or evaluation of Ms Pagella’s report, nor the weight to be attached to it. For the detailed reasons given by the Tribunal, the report does not provide sufficient or reliable evidence, even to the low standard applicable, that the Appellant was at real risk of suicide due to his fear of removal to India. On that basis, the initial threshold as to risk has not been established, regardless of whether the fear on return is objective or subjective and the Tribunal does not reach the next stage of considering whether, further to AM the Respondent had discharged the further evidential burden as to availability of treatment or support on return.
27. On the second issue, the First-tier Tribunal refers to the Appellant’s medical evidence, specifically that from his GP, in paragraph 18 of the decision. It is not necessary for the two letters from the GP from 23 October 2017 and 15 July 2019 to be quoted more fully, an accurate summary of them is given in the First-tier Tribunal’s decision and indicates that the evidence contained therein has been taken into account. The First-tier Tribunal correctly notes that the Appellant’s GP notes are not

available and that the GP evidence did not indicate any formal diagnosis of PTSD. As above, the importance of GP records and their relevance to both a Tribunal and to any expert assessing an Appellant has been confirmed recently by the Upper Tribunal in HA.

28. The grounds of appeal erroneously refer to the First-tier Tribunal finding that it was not known how the Appellant's GP assesses his psychological condition, however, the decision itself stated, 'I do not know how his GP currently assesses his psychological condition' (my emphasis added). Given the latest available evidence from the Appellant's GP prior to the hearing was nearly eighteen months' old, the First-tier Tribunal's statement is entirely justified.
29. Overall, there was no error of law by the First-tier Tribunal in its consideration of the evidence from the Appellant's GP. That evidence was very limited, out of date and did not address at all the key issue for the Tribunal of the risk of suicide. The extent of the evidence that was available has self-evidently been taken into account in the decision.
30. Finally, there is no error of law in the First-tier Tribunal's dismissal of the appeal on Article 8 grounds. As acknowledged at the hearing on behalf of the Appellant, if his claim under Article 3 fails, it is unlikely that consideration under Article 8 could take matters any further for him. In light of the reasons given above as to the assessment of evidence and risk containing no error of law, there is no separate error in the assessment of Article 8 by the Tribunal which give detailed and cogent reasons for dismissing the appeal on this basis in paragraphs 28 to 30 of the decision.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

Anonymity order

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

Signed G Jackson

Date

16th May 2022

Upper Tribunal Judge Jackson