



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

Appeal Number: PA/00466/2020

THE IMMIGRATION ACTS

Heard at : Manchester Civil Justice Centre **Decision & Reasons Promulgated**
On : 21 February 2022 **On : 22 March 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

Iram Ghulam Nabi

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moksud, instructed by Lincoln Solicitors

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was Microsoft Teams. 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 appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision refusing her asylum and human rights claim.

3. The appellant is a citizen of Pakistan born on 6 October 1986. She arrived in the UK on 5 January 2014 following a successful appeal against a decision refusing her application for entry clearance to the UK as a family visitor. She claimed asylum on arrival, in relation to her religious conversion and issues relating to her marital breakdown as well as on Article 3 and 8 grounds relating to her health. Her claim was refused on 4 August 2017.

4. The appellant appealed against the refusal decision but only pursued grounds relating to Article 8 at the appeal hearing on 12 June 2018, where it was conceded that her health issues did not reach the Article 3 threshold and that her asylum claim in regard to her change of religion had been false. The evidence at that hearing was that the appellant had had a kidney transplant in Pakistan when she was eight years of age and had been receiving dialysis there when her kidney failed again, but that she could not receive dialysis on return as she no longer had the money to pay for it. She had previously had a business in Pakistan and also her husband had supported her, but she did not have the business any more and her husband had left her towards the end of 2013 when she stopped working and had since remarried and had two children. Her kidneys had failed again just before she came to the UK but she denied having come to the UK to access medical treatment.

5. Judge Birrell, who heard the appeal in the First-tier Tribunal, made adverse credibility findings against the appellant and her sister, finding them both to be unreliable witnesses and rejecting the claim that the appellant was estranged from her husband. The judge was satisfied that the appellant had come to the UK because her transplant was coming to the end of its life and she knew that she would need to start dialysis again and wanted to receive dialysis free of charge in the UK rather than paying for it in Pakistan. The judge considered that the appellant could receive dialysis in Pakistan and that she would be supported there by her husband, a wealthy man with an agricultural business, who could afford to pay for her treatment. She was not satisfied that the respondent's decision to remove the appellant to Pakistan was disproportionate and concluded that the appellant's removal to Pakistan would not be in breach of Article 8. She accordingly dismissed the appeal in a decision promulgated on 19 June 2018.

6. The appellant then made further submissions in June and October 2019, relying on new medical evidence from her Consultant Nephrologist, Dr Anu Jayanti. That evidence confirmed the significant deterioration in the appellant's medical condition and her dependency upon three weekly sessions of dialysis and referred to other medical conditions from which she suffered.

7. The respondent, in a decision dated 12 December 2019, concluded that the evidence was not sufficient to meet the Article 3 threshold as set in N v SSHD [2005] UKHL 31 and considered that the appellant could access treatment in Pakistan. It was also not accepted that the appellant's removal would breach Article 8 on the basis of family or private life in the UK.

8. The appellant's appeal against that decision was initially heard by First-tier Tribunal Judge Dainty on 5 March 2020 and was dismissed in a decision

promulgated on 11 March 2020. Judge Dainty's decision was, however, set aside by the Upper Tribunal with the respondent's agreement, owing to the judge's failure sufficiently to engage with or address the issues surrounding the evidential burden upon the respondent in relation to the medical issues, particularly in relation to the appellant's transit to Pakistan. The matter was remitted to the First-tier Tribunal, where it was considered that the appellant's case would be determined afresh, with the clarification since provided by the Supreme Court in relation to Article 3 health cases, in AM (Zimbabwe) v SSHD [2020] UKSC 17.

9. The appeal was then heard again by First-tier Tribunal Judge Siddiqi. There was a more recent medical report before Judge Siddiqi, from Dr Jayanti, confirming that the appellant would not be able to tolerate any missed dialysis sessions operating out of her schedule of three weekly sessions and that to do so would have "fatal consequences". Dr Jayanti referred to other complications of advanced chronic kidney disease from which the appellant suffered and for which she required medication and treatment. Dr Jayanti concluded that the appellant's time was limited, even with all the medical facilities in the UK, and that she was in no fit state to undertake long distance travel, even in a wheelchair, as there was a risk of cardiac arrest.

10. In dismissing the appellant's appeal, in a decision promulgated on 23 February 2021, Judge Siddiqi took account of the adverse credibility findings previously made against the appellant and her sister, in particular in regard to the appellant's ability to access medical treatment in Pakistan, and found no reason to depart from those findings. The judge accepted Dr Jayanti's report in so far as it fell within her expertise as a nephrologist but considered that there was a lack of medical evidence from specialists in the other relevant areas to support the claim that the appellant would be at risk in transit, in particular from a cardiologist confirming the risk of cardiac arrest. Judge Siddiqi concluded that there was insufficient evidence to show that the Article 3 threshold was reached in regard to the risk to the appellant during her journey to Pakistan and upon return to Pakistan. She found that the appellant's removal would not be in breach of Article or Article 8 and she accordingly dismissed the appeal.

11. The appellant sought permission to appeal the decision to the Upper Tribunal on various grounds challenging the judge's approach to the medical evidence and her approach to the question of the appellant's access to medical treatment on return to, and in Pakistan. Permission was granted in the First-tier Tribunal and the matter came before me.

12. At the hearing, Mr Moksud appeared for the appellant and Mr Diwncyz for the respondent. Mr Moksud had before him, and relied upon, a further letter from Dr Jayanti dated 4 July 2021 which I did not have before me, but which Mr Diwncyz confirmed that he had seen and which was in similar terms to the previous letter from July 2020. Mr Moksud made submissions relying upon, and expanding upon the grounds and he requested that Judge Siddiqi's decision be set aside and that the decision be re-made by allowing the appellant's appeal.

13. I do not propose to set out Mr Moksud's submissions, because Mr Diwncyz accepted that there was a material error of law requiring the judge's decision to be set aside. That was in relation to Judge Siddiqi's approach to the expert evidence and her consideration that Dr Jayanti did not have the expertise to give an opinion on the risks to the appellant of flying. Mr Diwncyz's view was that Dr Jayanti's report was evidence which was capable of being given considerable weight in relation to the risks to the appellant and the fact that she was not fit to fly. Mr Diwncyz considered that the adverse credibility findings previously made did not detract from the fact that the appellant was a critically ill individual who was not fit to fly.

14. Mr Diwncyz submitted that the matter should be remitted to the First-tier Tribunal for the appeal to be heard again, with the benefit of further evidence, in light of the limited nature of the evidence before Judge Siddiqi, and for there to be consideration of more recent evidence of the current medical treatment available in Pakistan, since the CPIN report referred to by the judge at [27] was out of date.

15. I enquired of Mr Diwncyz what was left to be determined in a remitted appeal, if he was in agreement that the appellant was a critically ill individual who was not fit to fly and if he was conceding that Dr Jayanti had the expertise to confirm the risks to the appellant on return to Pakistan. It seemed to me that on the basis of his concession the appeal ought simply to be allowed. Mr Diwncyz confirmed that he was content for me to re-make the decision myself on that basis and allow the appeal. He had no objection to that and agreed that it was a course properly open to me on the evidence already available.

16. In light of Mr Diwncyz's concession, it seems to me that the appellant has demonstrated that the high threshold has been met to make out an Article 3 claim on health grounds, in line with the guidance in AM (Zimbabwe), and in accordance with the test set out in Paposhvili v. Belgium - 41738/10 (Judgment (Merits and Just Satisfaction) : Court (Grand Chamber)) [2016] ECHR 1113, namely that:

“substantial grounds have been shown for believing that he or she, 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”

17. As Mr Diwncyz properly conceded, the appellant, irrespective of whether she had given an unreliable account of the support and ability to access treatment available to her in Pakistan, is a person who has demonstrated, by way of reliable expert medical evidence, that she is not fit to fly and that if she did so she would be at risk of cardiac arrest. She is, as Mr Diwncyz said himself, a critically ill individual who has numerous serious health issues and would be at imminent risk of death, according to the medical evidence, if she did not receive the appropriate treatment immediately as required. It seems to me that there is little, if any, scope within the evidence to conclude that the situation is

anything other than one in which Article 3 would be engaged by the appellant being forcibly removed from the UK.

18. Accordingly the appellant's appeal is allowed on Article 3 grounds. As such, there is no need to go on and consider Article 8.

DECISION

19. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside and is re-made by allowing the appellant's appeal on Article 3 human rights grounds.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 21 February 2022