



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

Appeal Number: AA/02981/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 November 2014**

**Decision & Reasons  
Promulgated  
On 3 December 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHAERF**

**Between**

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

Appellant

**and**

**AFZAL MOHAMMAD  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kandola of the Specialist Appeals Team

For the Respondent: Mr B Hawkin of Counsel instructed by HRS Solicitors LLP

**DECISION AND REASONS**

## **The Respondent**

1. The Respondent to whom I shall refer to as “the Applicant” is a Pakistani national born on 4 June 1970. In previous proceedings in the Immigration and Asylum Chamber or its predecessors it has been found that he came to the United Kingdom in 1998. His previous claim for indefinite leave on the basis of fourteen years’ long residence was ultimately dismissed on 8 March 2011.
2. The Applicant then sought asylum which the Appellant (the SSHD) refused on 1 May 2014. On 2 May 2014 the Respondent made a decision to give directions for his removal to Pakistan.

## **The First-tier Tribunal’s Determination**

3. On 12 May 2014 the Applicant through his solicitors lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended. The grounds refer to his mental condition and psychological incapacity and that following his detention by the Respondent in 2011 his mental condition had deteriorated and he had now received a working diagnosis that he is suffering from paranoid schizophrenia. The grounds mention the length of time the Appellant had been in the United Kingdom and refer without particulars to Articles 2, 3 and 14 of the European Convention.

## **The First-tier Tribunal’s Determination**

4. By a determination promulgated on 7 October 2014 Judge of the First-tier Tribunal Blum dismissed the appeal on asylum and Article 3 of the European Convention grounds and allowed it on human rights grounds by way of reference to Article 8.
5. On 22 October 2014 Judge of the First-tier Tribunal Shimmin granted the SSHD permission to appeal on the basis that the Judge had arguably erred by considering the availability and cost of mental health treatment in Pakistan when compared to the cost in the United Kingdom in his approach to the claim under Article 8 and had not adopted the more appropriate test of the effect on the Applicant’s private life if he was removed to Pakistan.

## **The Upper Tribunal**

6. The Applicant did not attend the hearing in person but was represented by Mr Hawkin of Counsel. His carer, Mr Shah referred to at paras.22, 31-34 and 36-37 of the determination, was in attendance. At the start of the hearing Mr Hawkin handed up the Applicant’s response under Procedure Rule 24.
7. For the SSHD Mr Kandola relied on the grounds for appeal. Looking at the determination as a whole, it was evident the Judge had allowed the appeal for reasons of the comparative difference to the Applicant in the quality of

medical care he would receive on return to Pakistan which compared poorly with the care he received in the United Kingdom. The Judge had considered this at length in paras.36 and 37 of his determination. He had not taken into sufficient account the judgment in *MM (Zimbabwe) v SSHD [2012] EWCA Civ 279* and the determination in *Akhalu (Health claim: ECHR Article 8) [2013] UKUT 00400 (IAC)*. Mr Shah as the Appellant's carer could return to Pakistan with the Applicant to assist in setting up appropriate care arrangements for him in Pakistan. The Judge had therefore erred in allowing the appeal under Article 8.

8. For the Applicant, Mr Hawkin relied on the PR 24 response. The Judge at para.37 of his determination had expressly stated:-

... This decision is not made on the basis of a difference in medical treatment between the UK and Pakistan but on the actual impact to the very specific nature of the Appellant's private life that he has established in the UK as a result of his mental illness, both in terms of his relationship with Mr Shah and in terms of his current daily social experience and expectations, and the destitution he is likely to face on his return without anyone to support him.

He submitted the Upper Tribunal should be slow to conclude a Judge meant something other than what he said and there was no good reason to think the Judge had said what he had said at para.37 of his determination unless he had meant it.

9. Mr Hawkin continued that the learning relevant to this appeal to be had from *MM* and *Akhalu* was that cases would be rare where the issue was the disparity of care between the United Kingdom and the country of removal. It should be noted the Judge had taken full account of the public interest at para.28 of his determination.
10. The Judge had reached his conclusion at para.37 after he had summarised the range of issues affecting or relevant to the Applicant in paras.28-36 of his determination and had relied on the expert medical and social worker evidence which had been filed with the Tribunal. At para.36 he had considered the extent and quality of the Appellant's private life in the United Kingdom and not just the difference in the quality of medical care he received in the United Kingdom compared with what he would be likely to receive on removal to Pakistan. Mr Kandola for the Respondent had no further submissions to make.

### **Consideration**

11. I find the Judge addressed a wide range of factors in addition to the disparity between the medical facilities available in the United Kingdom and Pakistan. He noted the Applicant had more likely than not arrived in 1998 and had been in the United Kingdom since then. The Applicant had not claimed to suffer from a medical condition for which there was no treatment available in Pakistan or claimed there was any reason why he would be unable to work there. This had been the conclusion of the Upper

Tribunal's determination promulgated on 8 March 2011 already mentioned in paragraph 1. This was before the Appellant had been detained by the SSHD and been diagnosed.

12. The Judge dismissed the Refugee Convention claim and turned to the claim under the European Convention. He noted the high threshold needed to make a successful claim in medical treatment cases explained in *N (Uganda) v SSHD [2005] UKHL 31*. He noted at para.23 what medical treatment would be available for the Applicant in Pakistan and found that in respect of the availability of medical treatment the Applicant had not shown that his circumstances crossed the high threshold to demonstrate a breach of Article 3.
13. The Judge went on to consider the Applicant's claim under Article 8. He noted that although the Applicant could speak Urdu in which language he had given evidence on 13 December 2010 he did not have any other ties to Pakistan. He also accepted the evidence from Mr Shah whom he found to be credible: see para.24 of his determination. He noted that the Applicant suffered a dramatic decline in mental health while detained in December 2011, referring to a psychiatric report; that he had been an in-patient for an aggregate period of seven months and was said to have undergone a catastrophic personality change. He referred to a further medical report giving a working diagnosis of paranoid schizophrenia and that he was neither able to instruct solicitors nor competent to give evidence: see paras.29-31 of his determination.
14. At para.32 the Judge noted that the social worker's evidence had not been challenged and was satisfied that the Appellant was incapable of independent living: see para.32. At para.34 he starts to set out his findings. The first sentence of para.34 contains the finding that the Applicant is likely to be rendered destitute if removed to Pakistan. The Judge referred to the medical evidence that the Applicant would be likely to be unable to access medical treatment in Pakistan without assistance and referred at para.35 to the very limited availability of psychiatric and psychological care outside family in Pakistan.
15. At para.36 he noted the strength and quality of the Applicant's relationship with Mr Shah who effectively is his carer and Mr Shah's wife. At para.37 the Judge explained that his decision was not based on the difference in medical treatment available in the United Kingdom and in Pakistan but on the basis of the private life the Applicant has established particularly with Mr Shah his carer which had come about because of the Applicant's mental condition and finally refers to his starting point at para.34 that the Applicant is likely to be left destitute on return to Pakistan.
16. The Judge took the correct approach which he outlined in para.26 and its footnote. I would add the comment that *MM* was a deportation case and that this appeal is a removal case. Before the First-tier Tribunal there was no evidence what facilities the SSHD would arrange for the Applicant if he were to be removed to Pakistan.

17. The determination of the First-tier Tribunal did not contain an error of law and therefore shall stand.

### **Anonymity**

18. There was no request for any directional order for anonymity and having considered the papers in the Tribunal file and heard the appeal find that none is required.

### **NOTICE OF DECISION**

**The determination of the First-tier Tribunal did not contain an error of law and shall stand.  
The consequence is that the appeal of the Applicant is allowed and the appeal of the SSHD is dismissed.**

**No anonymity direction or order is made.**

Signed/Official Crest  
2014

Date 02. xii.

Designated Judge Shaerf  
A Deputy Judge of the Upper Tribunal