



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24544/2016

THE IMMIGRATION ACT

Heard at Field House
On 9th January 2019

Decision & Reasons Promulgated
On 5th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Shahid [C]
(NO ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Murphy of Counsel, instructed by Western solicitors
For the Respondent: Mr Tarlow, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Woolf promulgated on the 9th April 2018 whereby the judge dismissed the appellant's appeal against the decision of the respondent to refuse the appellant's claims based on Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Chapman on 12th November 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Immigration background

4. The appellant entered the United Kingdom on 11 October 2009 with leave valid as a student until 30 April 2013. The appellant was then granted further leave under Tier 1 Post-study Work Migrant until 28 August 2014.
5. I note at B3 and again in B7 in the submissions made by the appellant's representatives that there is reference to the fact that the appellant went to settle down in Pakistan in 2013-2014 but had problems finding employment. It stated that (B8) when he visited Pakistan for 6 weeks in 2014 he suffered liver damage and had to be hospitalised on his return to the UK. It is material that the appellant determined thereafter to return to the United Kingdom, having been in Pakistan with a view to settling in his country of origin.
6. On 26 August 2014 the appellant made an application as the partner of an EEA national. That application was refused. The appellant on 25 September 2014 made an application on the basis of private life, which was also refused.
7. Clearly by that stage the appellant no longer had any leave to be in the United Kingdom. The appellant thereafter has remained in the United Kingdom.
8. At the date of the present application the appellant, a 34-year-old man, had been in the United Kingdom for 6 years. The appellant does not appear to be pursuing application on the basis of family life but is seeking to pursue rights on private life grounds based in the main upon his medical conditions.
9. In considering the appellant's application the respondent considered whether the appellant qualified under the Immigration Rules specifically paragraph 276 ADE (vi). The issue was whether or not there were very significant obstacles to his integration into the country to which he would have to go if he were to leave the United Kingdom. The appellant did not fall for consideration under any of the other of the provisions of the rules.
10. Otherwise consideration was given to the appellant's rights under Articles 3 and 8 of the ECHR.
11. In essence the appellant was seeking to rely upon medical conditions as constituting either very significant obstacles to his integration into his country of origin or exceptional circumstances warranting a grant of leave to remain outside the rules.

12. The appellant has indicated that he suffers from type I diabetes mellitus, hypertension, depressive disorder and anxiety, liver and kidney disease, back, neck and leg pain following a car accident in 2010. In the car accident in 2010 the appellant had had bone fractures which had required surgery. The appellant is seeking to rely upon his medical conditions including his mental health condition includes potential suicidal ideation.
13. There is in the documentation submitted a list medication that the appellant was taking at the time of the application itself. [see B4] It is suggested that the cost on a monthly basis for the medication in Pakistan would be 16,440 Pakistan rupees per month. No indication has been made as to how that calculation is arrived at.
14. According to the decision the evidence with regard to the appellant's mental health conditions was contained in reports dated 18 August 2015 and an NHS report dated 23 September 2016. In the original report of 18 August 2015 it was the appellant's own report that he had taken too much insulin a number of months prior to seeing the doctor. He claimed that he done it deliberately as he thought that his life was not worth living.
15. However the most recent report from the NHS Hounslow dated 23 September 2016 whilst confirming that the appellant suffered from depression did not indicate that he was suffering from any suicidal ideation.
16. It has to be noted that the appellant himself did not attend the hearing as it was suggested he was unfit and his sister did attend the hearing. It is suggested in the skeleton argument submitted by the appellant's representative before me that her evidence was critical in that it stated that the appellant needed an insulin pump and such pumps were not available in Pakistan.
17. The problem with regard to the evidence is that it is coming from the appellant's sister not from a medical source. Whilst clearly an insulin pump may be the best means by which the medication can be administered to the appellant there is nothing to suggest that other means of administering the medication, such as by the appellant himself, would not work equally as well provided the appellant followed the proper dosage. The appellant's sister is not an expert in that respect.
18. The grounds of appeal themselves merely asserted that the appellant had been in error in relying upon his sister to attend the hearing and give evidence on his behalf. The appellant accepted that he should have attended to hearing himself.
19. The grounds continue by asserting that his case should have been allowed under article 3 and article 8 on the basis of his medical condition and that the appeal should also be considered under article 2. The appellant raises the prospect that his return to Pakistan could engage aspects of torture, which he asserts can come in many forms.

20. At the hearing before me the appellant's representative submitted a skeleton argument and a bundle of documents that he was seeking to rely upon. No issue was taken by the respondent's representative with the skeleton argument but it was pointed out that the documents and some of the submissions being made were not in evidence before the First-tier Tribunal Judge.
21. The first point made in the skeleton argument was that the judge should have adjourned the case so as to enable the appellant to attend and give direct evidence as to his condition. Thereafter reliance is placed upon a statement submitted by the appellant post the date of the decision by the judge which sets out the circumstances in which he currently lives and the help, which he receives from his sister.
22. The respondent's representative made the point that there was no application for an adjournment and the appellant had conceded in the grounds, which he had lodged, that he had chosen to rely upon his sister to make submissions and give evidence on his behalf.
23. Whilst I appreciate that the appellant was unrepresented, it is not for a judge of his own motion to determine to adjourn the case. The appellant had had considerable time to submit documentation and evidence in support of his case. He had had legal representatives in the past, who had made submissions with the original application. The appellant has not suggested that on the day in question he was incapable attending the hearing but rather suggested that he is wrong to have relied upon his sister to have attended on his behalf. That was a matter of choice by him. If he was seeking to assert that he was unfit to attend the hearing he would have needed medical evidence to substantiate such. On the basis of such medical evidence and application to adjourn could have been made.
24. There was no application to adjourn. In the circumstances the judge was perfectly entitled to proceed with the hearing and to consider the appeal on the basis of the evidence lodged.
25. Thereafter as stated the skeleton argument sets out the circumstances in which the appellant is living in the United Kingdom. In considering the circumstances in which the appellant came to be in the United Kingdom and in which he was living the judge had clearly considered the evidence that was before him and was entitled to make findings that he did.
26. The skeleton argument on behalf of the appellant seeks to rely upon the statement in which the appellant states that the insulin pump that he has is priced at between £4 and £25 a day, which when set against the average pay in Pakistan of £1.50 per day would mean that the appellant would not be able to have an insulin pump in Pakistan. The problem with regard to the evidence is that it would need medical or expert evidence to substantiate much of what the appellant was saying. The medical evidence would have to deal with whether

there were available alternative means of administering the insulin which the appellant requires and the effectiveness of such alternative treatments. Merely because the appellant in the United Kingdom has the benefit of an insulin pump as the best form of treatment available, does not mean that other forms of treatment would not be equally as effective provided the appellant applied the appropriate dosage. [see the case of *AM (Zimbabwe)* 2018 EWCA Civ 64 referred to below specifically the facts in respect of the 2nd appellant in that decision, who was suffering from forms of cancer]

27. Within the submissions reliance is then placed upon the consequences to the appellant of not receiving his insulin. It is argued that the appellant may over a period of time lose limbs or suffer from retinopathy. Such symptoms are not uncommon in individuals that are suffering from diabetes and require insulin to support them on a daily basis. Indeed even in the United Kingdom individuals that suffer from diabetes have to carefully monitor the sugar levels, insulin levels, problems with hypoglycaemia and a number of other factors and can still suffer loss of limbs and retinopathy.
28. Whilst reference has been made to the risks that face the appellant, they are risks that face all the individuals that suffer from diabetes.
29. The appellant's representative has raised issues with regard to the appellant's physical and mental health. The argument deals firstly with *D v UK* identifying a number of factors which may engage very exceptional circumstances, namely a) that the applicant is critically ill, b) appear to be close to death, c) could not be guaranteed nursing or medical care in his country of origin and d) had no family in his country of origin willing to or able to care for him or provide for him.
30. It was submitted that other cases extend the principles. In *D* compelling humanitarian considerations weighed against the applicant's expulsion.
31. Paragraph 183 from *AM (Zimbabwe)* [2018] EWCA Civ 64 is relied upon. Therein it was ruled:-

"183 The court considers that the 'other very exceptional cases' within the meaning of the judgement in *N v UK* , which may raise an issue under Article 3 should be understood to refer to situations involving the removal of a seriously ill person in which 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, are 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. The Court points out that these situations correspond to a high threshold for the application of Article 3 of the convention in cases concerning the removal of aliens suffering from serious illness."

32. Thereafter having dealt with the physical problems that might face the appellant issues are raised with regard to the mental health aspect and *J v SSHD* [2005] EWCA Civ 629 were factors are emphasised that in removing an individual the state has effective mechanisms to reduce the risk of suicide. If there are effective mechanisms that also will weigh heavily against an applicant's claim that removal will violate his or her article 3 life rights.
33. The appellant has sought to rely upon the none availability of specific forms of Insulin pumps in Pakistan. That is not to say that that type of treatment is the only type that can deal with the appellant's condition.
34. I note also that the appellants have sought to raise the various medical conditions as a basis for seeking to be able to remain in the United Kingdom. I have considered the issues arising because of the medical condition. The case law clearly identifies that medical issues may be considered both under Article 3 and Article 8. Insofar as the appellant has raised medical issues the cases of *N* [2005] UKHL 31 and *D v UK* [1997] 24ERR 425 are the principal case law basis for considering medical conditions. The cases concentrate on the imminence of death and palliative care available in the recipient state as an individual approaches death.
35. I note the approach taken in the case of *GS India* [2015] EWCA Civ 40. The European Court of Human Rights has set down a slightly different test in the case of *Paposhvili v Belgium* 13th December 2016 ECtHR (Application no 41738/10).
36. The case of *EA & ors (Article 3 medical cases- Paposhvili not applicable)* [2017] UKUT 445 indicated that given the line of authorities in the United Kingdom the approach advocated in *Paposhvili* was not to be followed. In paragraph 67 of the judgment is the following:-

"67 This result is all of the piece with the repeated statements in the Strasbourg court that 'aliens who are subject to expulsion cannot in principle claim any entitlement to remain in the territory of a contracting state in order to continue to benefit from medical, social or other forms of assistance and services provided by the expelling state"
37. The exceptions set down in the cases of *N* and *D* and such exceptional cases by reason of the factors therein set out may result in a grant of leave. In order to succeed on the basis of medical conditions and either Article 3 or Article 8 one has to bring oneself within the exceptions indicated.
38. To assist in applying the principles guidance has been given in the case of *AM & others v SSHD* [2018] EWCA Civ 64. In paragraph 19 of the judgment reference is made to the test set down in *N v SSHD* in which it is emphasised that in respect of aliens cannot claim entitlement to remain to benefit from medical treatment. It is only in exceptional cases where the humanitarian grounds against removal are compelling that Article 3 would be engaged. On

the facts referred to in the case Mr Nowar was suffering from cancer and it was accepted that he would not receive the same cutting-edge treatment on return to Jordan. AM was suffering from HIV+ and again whilst the treatment may not be the most up to date the condition would receive treatment on return to Zimbabwe. In setting guidance paragraph 38 of the judgment contains the following:-

“38 So far as the ECtHR and the Convention are concerned, the protection of Article 3 against removal continues by identifying that the boundary has been shifted not oval in medical cases is not now confined to deathbed cases where death is already imminent when the applicant is in the removing country. It extends to cases where “substantial grounds have been shown for believing that the applicant, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country 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 to a significant reduction in life expectancy.”

39. The paragraph continues by identifying that the boundary has been shifted from being defined by the imminence of death to being defined by an imminence of intense suffering or death in the receiving state which may occur only because of the non-availability in that state of appropriate treatment. That interpretation is emphasised in paragraph 40 of the judgement where it requires a serious and rapid decline in health resulting in intense suffering for the Article 3 standard to be engaged.
40. The judge in paragraph 35 of his judgement has identified that the evidence fell short of establishing that the physical ill-health of the appellant had reached such a critical stage that article 3 was engaged. The evidence did not show that the appellant was dying and it had not demonstrated that medical or other services necessary to preserve his life were not available in Pakistan. Whilst the evidence did show that the specific pumps that the appellant used were not available, the judge concluded that the evidence did not show that other ancillary treatments were not available in Pakistan both with regard to his diabetes and conditions flowing therefrom.
41. The judge has gone on to consider the mental health condition of the appellant and whether or not letting gauges the criteria set down. The judge was satisfied that the respondent would take necessary steps to obviate any risk appellant would harm himself and in any event that there was no indication that there was an immediate risk of self-harm or suicide.
42. The judge went on to consider specifically article 8 whether article 8 was engaged on the facts as presented. The judge concluded that the appellant had family members back in Pakistan that could assist him. He noted otherwise other family members who may be able to assist the appellant and was satisfied

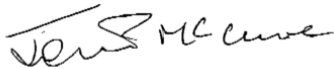
on the basis of the combine resources of the family members being sufficient to provide for the appellant.

43. The judge concluded that the circumstances were not such as to breach either the article 3 or article 8 rights of the appellant. Given the careful analysis of the facts as presented to the judge, the judge was entitled to come to the conclusions that he did.
44. In the circumstances there is no material error of law. I uphold the decision to dismiss this appeal

Grounds of appeal

Notice of Decision

45. I dismiss the appeal on all grounds.



Signed

Deputy Upper Tribunal Judge McClure

Date 28 January 2019