



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

Appeal Number: PA/03676/2018

THE IMMIGRATION ACTS

**Heard at Field House
On February 12, 2019**

**Decision & Reasons
Promulgated
On February 19, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR H A T
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bradshaw, Counsel instructed by Paragon Law
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan who arrived in the UK on March 7, 2016 and claimed asylum. The respondent refused his application under paragraph 336 HC 395 on March 6, 2018. The appellant lodged his appeal under Section 82(1) of the Nationality, Immigration and Asylum Act 2002

on March 16, 2018 and his appeal came before Judge of the First-tier Tribunal Ferguson on July 20, 2018 who in a decision promulgated on September 19, 2018 dismissed the appellant's protection claim but allowed his appeal on Article 8 grounds, finding the appellant had satisfied paragraph 276ADE(vi) HC 395. The respondent appealed that decision on September 26, 2018 and permission to appeal was granted on October 10, 2018.

2. On November 30, 2018 I heard submissions from both representatives. I concluded, after hearing submissions, that there had been an error in law. The Judge had allowed the appeal on the basis that the appellant satisfied paragraph 276ADE HC 395 but in doing so there was no consideration in the Judge's decision on what treatment, if any, was available for the appellant in Pakistan, and when considering whether there any "very significant obstacles" this is a fatal flaw. In deciding what obstacles were in Pakistan it was incumbent upon the Judge to take that into account in addition to the matters which he had already considered.
3. The Court of Appeal in Parveen and the SSHD [2018] EWCA Civ 932 made clear that "very significant" obstacles connoted an "elevated threshold and the test would not be met by mere inconvenience or upheaval".
4. I adjourned the remaking of the decision until today's date to enable further evidence to be submitted.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

5. Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

PRELIMINARY ISSUES

6. The respondent provided an additional bundle of documents that he sought to rely on which included the August 2018 CPIN report on medical and healthcare issues, mental health NGOs in Pakistan, articles on mental health in Pakistan and case law.
7. The appellant provided two additional bundles including two statements dated November 26, 2018 and January 18, 2019, a statement from Ms MAK dated January 18, 2019, country expert report from Dr F Wali, updated psychiatric report from Professor Zeitlin, letters from CPFT Psychological Wellbeing Service, letter of support from Ms Stephanie Allen and objective evidence.

8. I agreed that some evidence would be required from both the appellant and witness.

EVIDENCE

9. The appellant adopted his two statements and gave oral evidence. Mr Avery cross-examined the appellant who gave the following replies:
 - (a) He last had contact with his family a long time ago. He spoke to his maternal uncle by phone. He was no longer in contact with him or any other family members because they have moved to Afghanistan, but he was unsure of the dates. His family had gone there because of problems with the Taliban where they lived. They came and harassed them in his home and were asking about his whereabouts.
 - (b) The Judge disbelieved his account of his family going to Afghanistan so when asked why they would have to flee there he stated the family had problems from both sides as no one accepted them.
 - (c) He agreed he had never been to hospital as a result of taking pills and that he was unaware what the pills were.
 - (d) He stated he had been to his local doctor, many times, and showed him the warts on the back of his neck. He currently was not on any medication.
10. In re-examination, Mr Bradshaw asked him a series of questions and he responded as follows:
 - (a) The Taliban were active in his area before he left the country and were controlling his area.
 - (b) He had also been to see the doctor when he was depressed, and the doctor told him he could do nothing about his depression but gave him details of a website which gave him advice.
 - (c) He tried to take pills on 2-3 occasions but had been unable to swallow the pills properly and had vomited although on one occasion he swallowed one pill.
 - (d) He did not go to see the GP or hospital after taking the pills because he did not feel like going. When pressed on why this was the case, he stated he was just thinking about committing suicide.
11. Ms M A K adopted her statement, dated January 18, 2019, and gave oral evidence. She believed the pills were painkillers but admitted she had not seen any packaging.
12. Mr Avery cross-examined her and she replied as follows:

- (a) She saw the appellant had taken pills on 2-3 occasions but only found him on the floor on one occasion.
 - (b) She was worried about him because of what she had seen albeit she was uncertain what he had taken.
 - (c) She did not call for an ambulance as her first thought was to get him up and see he was okay. After making sure he was okay she could not say why she had not called an ambulance. She asked him to go to the doctor, but he was stubborn about it and would not go.
 - (d) When pushed why she did not make him seek medical assistance she was unable to give a reason.
13. I asked her about her relationship with the appellant and she confirmed they began their relationship almost straight away but she continued to live at home and they are currently not engaged.

SUBMISSIONS

14. Mr Avery invited the Tribunal to find the appellant had either exaggerated his condition or was making it all up. The Judge had found his core account lacked credibility and rejected his protection claim. That finding was relevant when considering the medical evidence.
15. Mr Avery submitted the medical evidence was flawed and it was unlikely the doctor had seen the Judge's decision. The Judge had considered his accounts and at paragraphs 27 and 28 he identified discrepancies between the accounts provided by the appellant to interviewer and the professor. The professor repeated what the appellant told him but failed to mention any of the Judge's findings in the decision and this undermined the usefulness of the assessment provided. The professor's finding at paragraph 35 that the appellant suffered from significant depression was equivocal and not a determinative finding.
16. His claim about attempting suicide must be looked at against the background of other evidence. Ms M A K did not see the need to seek medical assistance even though she claimed he was in a bad way and she was unaware of the tablets he had taken. Although he claimed to have been to see his doctor, he had not been prescribed any medication to treat. He submitted there was no serious mental health problem.
17. Country evidence in the CPIN report (see page 19) confirms there are limited mental health facilities and NGOs in Pakistan. The "Expanding Mental Health in Pakistan" (page 49) confirms that families do provide support for people with mental health problems.
18. With regard to his family fleeing to Afghanistan he submitted this was an attempt by him to say he had no family. There was no reason why they could not have contacted him or why they would flee to Afghanistan rather than a different area of Pakistan.

19. Turning to paragraph 111 of GS (India) and Ors c SSHD [2015] EWCA Civ 40 he submitted that the absence or inadequacy of medical treatment carried limited weight in article 8 situations. At paragraph 37 of Treebhawon and Others (NIAA 2002 Part 5A-complling test: Mauritius) [2017] UKUT 13 (IAC) the test on integration is set out.
20. Mr Avery concluded that his medical condition was not as bad as he made out and he would have some family support in Pakistan.
21. Mr Bradshaw adopted his skeleton argument and responded to Mr Avery's submissions. Whilst Professor Zeitlin does not refer to the decision, he did consider the possibility of the appellant manufacturing his evidence. He relied on paragraphs 19-24 of his skeleton argument. In paragraph 49 of the report the Professor noted that the truthfulness of the account was important and accepted fabrication could not be excluded but concluded that regardless he felt the diagnosis stood up to scrutiny.
22. Turning to his suicide attempt, Mr Bradshaw relied on his account and submitted that it was not an attempt to bolster his claim. Even if it was not a firm suicide attempt it was an act of self-harm. Ms MAK's evidence should be taken at face value and provided support for his claim.
23. Mr Bradshaw addressed the CPIN report and argued this report supported what the country expert had said as it highlighted a distinct lack of facilities. The appellant would be unable to access medical facilities where he lived because he lived around 2-3 hours from the nearest largest city. He submitted that the appellant would be unable to access the kind of treatment Professor Zeitlin says he needed. To access regular treatment, he would have to relocate and therefore even if his family were still in his home area he would be living alone, if he relocated to where the facilities were. The "Expanding Mental Health in Pakistan" report must be balanced against the evidence provided by the appellant in his bundle.
24. With regard to his family, Mr Bradshaw explained that being a Pakistani Pashtun family marginalised his family and there was also the risk from the Taliban. The FTT Judge accepted the Taliban were active in his home area and there was a good reason why his family had relocated.
25. Mr Bradshaw submitted that GS was not relevant to significant obstacles test (paragraph 276ADE HC 395) albeit it was relevant to applications outside the Rules. This was an application that the appellant satisfied paragraph 276ADE HC 395. His skeleton argument, at paragraphs 8 and 9 of his skeleton argument, address what "very significant obstacles" meant as expanded upon by the Court of Appeal in Parveen v SSHD [2018] EWCA Civ 932. The court in Parveen altered what the Tribunal had said in Treebhawon. Paragraph 12 of the skeleton set out the respondent's own guidance.
26. Mr Bradshaw invited the Tribunal to have regard to the expert evidence of Dr Wali (in particular, paragraphs 72-74) and if he was struggling to access

services here then how would he cope in Pakistan. Letters from the college confirm he is struggling. He asked that the Tribunal have regard to underlined sections of Section B of the bundle which confirmed the expert's view that stigma is a real problem.

27. There was a general threat from the Taliban even if there was no specific threat. This was impacting on his mental health. He submitted the appellant would be unable to build a normal life because of his mental health.
28. Alternatively, he invited consideration under article 8 ECHR and whilst a mental health claim cannot be the basis for an article 8 claim it would be a factor to take into account. He has a girlfriend which demonstrated an extension to his private life and had been here for almost three years.

FINDINGS

29. I am invited by Mr Bradshaw to allow the appellant's appeal on human rights grounds (article 8 ECHR) on the grounds he either satisfied paragraph 276(1)(vi) ADE HC 395 or on the standalone private life grounds set out above.
30. In assessing the appellant's appeal, I have had regard to all the evidence referred to above and I have taken into account the Joint Presidential Guidance No. 2 of 2010 in view of the mental health concerns expressed in the report.
31. However, in assessing what may await the appellant in Pakistan I must refer to the unchallenged findings in the FTT Judge's decision. These are:
 - (a) The Judge rejected his claim that he had been taken by the Taliban (once or twice) and his consequent claim that he escaped was also rejected.
 - (b) The Judge did not accept the Taliban had been back to his home address.
 - (c) There was no background evidence to confirm that the young child randomly recruited would retain the interest of the Taliban for the length of time claimed by the appellant.
 - (d) The appellant had fabricated his account to present a greater risk.
32. Professor Zeitlin has provided a report about the appellant's mental health, dated April 29, 2018. In his original report he concluded that the appellant did not demonstrate evidence of a major psychiatric disorder but noticeably lowered mood, sleep problems and weight loss were consistent with recent onset of mild depressive disorder. He further concluded that it was possible that someone with his symptoms could come under the heading of PTSD but his overall condition would fit more with Adjustment Disorder. He acknowledged that the appellant may have had pre-existing

experiences and behaviours that would indicate vulnerability but went on to conclude that he was unlikely to make any significant changes until he had a relatively clear security and safety. This latter finding was based on the fact the appellant's account was true and his conclusions in this report must be read against the background of the Judge's decision to reject his protection claim and effectively to find that he had fabricated his claim.

33. I previously set aside the Judge's decision because this earlier report failed to take into account country conditions in Pakistan. The Professor has since provided an updated report dated January 20, 2019.
34. Mr Avery has criticised the report for failing to consider the Judge's findings. This more recent report does not identify what documents were provided to the Professor and I was not provided with the letter of instruction. Mr Bradshaw did not state the Professor had been provided with Judge's decision and I must therefore consider this report with this qualification in mind.
35. The appellant's care worker, Stephanie Allen, reported to the Professor that since April 2018 the appellant's mental health had been declining and that he had been referred to the Cambridgeshire and Peterborough Foundation Trust for counselling. She described how the appellant was "overwhelmed" by what was going to happen and although meetings have been arranged for him with NACRO he was not attending such meetings. She referred to the fact he was self-harming but had seen no evidence personally of this. Ms Allen did not believe the appellant had contact with his family and she believed they were in Afghanistan based on what she had been told by the appellant. She did not think he had had any mental health assessment.
36. The appellant's claim is that he has attempted to take an overdose on three occasions and his girlfriend said that she found him on the floor on one such occasion but did not call the doctor or ambulance over this incident.
37. The Professor discussed general matters with the appellant. He noted he was no longer attending college because he did not sleep well and had negative thoughts in relation to self-harm. The tablets he claimed to have taken had been bought over-the-counter without prescription. Neither the appellant nor his girlfriend were able to identify what tablet he may have taken although the appellant stated he had been to counselling he had not discussed self-harm with them. The appellant confirmed was not taking any medication although he suffered from headaches.
38. At paragraph 23 of the report the Professor stated that his opinions were dependent on the accuracy of the information available and the truthfulness of the statements made. This is important when considering possible problems that could face the appellant if he were returned to Pakistan.

39. The Professor has prepared his report on the basis of what he recorded in paragraph 25 of the report. He noted the appellant appeared vague and frequently stated he could not remember things and the Professor concluded that whilst dementia could not be fully excluded his impression was that the appellant was not able to make use of his continuing normal level of cognitive function. His conclusion was that the level of depression identified in the previous report had increased and he would now describe the appellant as having a moderate depressive disorder whereas previously he was described as having a mild depressive disorder. He believed there was no major change with regard to proposed treatment from that expressed in the original report. Based on the information available to him he concluded that a return to Pakistan was feasible if he had family and suitable health facilities available to address his ongoing condition.
40. I have considered the Professor's report, but his assessment of the appellant's problems is prefaced by what he was told by the appellant. As he stated in his reports if the information is not true then the opinions may well change.
41. There is no doubt the appellant presented as a person who does not want to return to Pakistan and has concerns if he were ordered to go back. It is not surprising that his mood has deteriorated since September 2018 because:
 - (a) He would be aware the respondent was appealing the decision.
 - (b) He would also have been aware that his protection claim had been rejected.
 - (c) Following the hearing in November 2018 he will be aware that his right to remain in this country was under further scrutiny.
42. Bearing in mind his age and immaturity his reaction to the threat of being returned is understandable.
43. Mr Bradshaw invited me to allow this appeal on the basis the appellant satisfied the requirements of paragraph 276ADE HC 395 albeit under the umbrella of article 8 ECHR.
44. In order to succeed on this basis the appellant must demonstrate that there would be "very significant obstacles" to his integration into the country to which he would have to go.
45. The starting point is that he has had his protection claim rejected and his claim that his family were no longer in Pakistan must be considered against this rejection of other core elements in his claim. At the original First-tier Tribunal hearing, the Judge rejected his protection claim in its entirety.

46. Today's challenge does not seek to go behind those findings and I approach the appellant's private life claim under both the Immigration Rules and article 8 ECHR on this basis.
47. I have taken into account the report provided by Cambridgeshire and Peterborough NHS Foundation Trust dated June 20, 2018. I assume this report would have been available to the First-tier Tribunal due to the date of the report. Psychometric tests described the appellant as suffering from moderate/severe depression and severe anxiety. There is evidence of two appointments to commence Cognitive Behavioural Therapy but it does not appear to be the case that the appellant took advantage of these.
48. I have considered two letters from Peterborough City Council dated November 23, 2018 and January 21, 2019. These letters indicate the appellant has been struggling with mental health and had been to his Doctor although other evidence suggests he has not been prescribed any medication for his condition.
49. Whilst I accept the appellant be depressed and/or anxious I am not persuaded that the appellant has a serious mental health condition. He has not sought the advice of a doctor or specialist at any stage. He stated in his oral evidence that he had not been to see his doctor about these issues. He may have discussed his problems with his social worker, the Professor and his girlfriend but these people are not the ones who would be able to help him.
50. There is no evidence of what medication he said he had been taking. By his own admission he has bought medication over-the-counter from a supermarket or chemist. He has never had a formal mental health assessment.
51. His girlfriend stated she found him on the floor but despite this she did not ring the emergency services nor ensure the appellant went to see the doctor about it.
52. Although he claimed to have taken a tablets, with the specific intention of self-harm, the appellant has sought no help or reported such matters to doctor or the emergency services.
53. When comparing mental health or medical facilities in Pakistan with those in the United Kingdom it is important to remember that they are two different countries and the fact facilities in this country may be better than those in Pakistan does not mean that he should be allowed to remain in this country.
54. The Country Policy and Information Note Pakistan: Medical and healthcare issues dated August 2018 contains a section on mental health. There are mental hospitals in Pakistan, 344 residential care facilities and 654 psychiatric units in general hospitals. However, the report stresses more

than 15 million people in Pakistan suffer from some form of mental illness and there are only five hospitals servicing a population 180 million people.

55. A recent article entitled “World Mental Health Day today” cited Dr Mufti as saying that young people are vulnerable to mental illness due to stress caused by the struggle for a better life. An article entitled “Expanding Mental Health in Pakistan”, prepared by the director of a psychiatric hospital in Karachi, described what treatment was available in the psychiatric hospital in Karachi. This establishment provided free psychiatric medicine to the poor. He described that there is a cultural aspect to Pakistan which played a positive role in the treatment and care of people with mental illness in that people still lived within the family environment and the Islamic belief instilled a greater acceptance of mishaps tragedies.
56. Dr Wali provided a report on the availability of services in Pakistan dated January 21, 2019. He was asked to consider the possibility of accessing psychiatric/psychological care in Pakistan, what the current situation in Pakistan was for people suffering with mental illness and thirdly could the appellant safely relocate in another part of Pakistan. His report mirrors the CPIN and identifies limited facilities especially in rural areas. At paragraph 28 of his report he identifies there are an estimated 96,430 private health facilities in what is a large unregulated part of Pakistani healthcare. Contrary to what was recorded elsewhere he stated there was a stigmatisation of mental illness and negative cultural attitudes had hindered the development of mental health and the appellant would be in danger of social victimisation and possibly ostracised from the community and taken forcibly to a religious healer to “remove the evil spirit”. Without family support he would struggle to live in Pakistan or secure housing, employment, suitable health and mental care or education. He would be unable to afford private mental health care in Pakistan and he would be unable to survive on his own for financial reasons alone.
57. Dr Wali’s report is prepared on the preface that he has no support in Pakistan. It is clear that this expert has not been made aware of the Judge’s earlier decision. The report does not address the issue, in any substance, from the perspective that he does have family to whom he can turn to. Mr Bradshaw submitted that internal relocation could not be possible because he would have to live alone but that submission fails to address the fact he has support available to him who could relocate with him, if necessary.
58. I have also considered material contained in section B of the most recent appellant bundle. Relevant material emphasises the lack of psychiatrists outside of urban areas and re-emphasises that those battling mental health illness do feel the sense of shame, dishonour and disgrace.
59. In his skeleton argument, Mr Bradshaw set out case law in respect of “integration” and “very significant obstacles”. In assessing the latter, I

have had regard to the guidance issued by the Court of Appeal in Parveen v SSHD [2018] EWCA Civ 932.

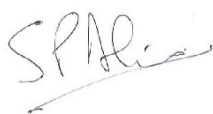
60. The evidence provided by the appellant's representatives has to be looked at against the earlier findings and the evidence that has been presented by the appellant and to a lesser extent his girlfriend.
61. I am prepared to accept the appellant suffers from depression and anxiety but these have not been serious enough to require prescribed medication and there is no evidence of the appellant engaging in any meaningful process with medical services. These concerns are reasonably likely to relate to the instability he currently faces and the fact that removal to Pakistan remains a realistic prospect for him.
62. I am satisfied, contrary to his claim, that he does have family to whom he can turn to. There is family support which the experts suggest would be necessary. He can turn to his family and I do not accept his claim they have fled Pakistan and gone to Afghanistan. Whilst the Taliban may have a presence in Pakistan, I am not satisfied they present any issue to him either on a personal general basis.
63. I therefore find the appellant does not satisfy the requirements of paragraph 276ADE HC 395.
64. I have gone on to consider his appeal outside of the Immigration Rules but as Mr Avery submitted, and Mr Bradshaw accepted, the absence of mental health facilities cannot form the basis of his private life claim. He does have a girlfriend but they do not live together. The appellant has not been attending college.
65. I accept he can speak English but there are no other positive factors under section 117B of the 2002 Act. Removal, based on the findings above, would not lead to unjustifiably harsh consequences such that his removal would be disproportionate.

Notice of Decision

66. There was an error of law in respect of article 8 ECHR. I have remade the decision and dismiss the appeal on human rights grounds. In all other respects the decision is upheld.

Signed

Date 15/02/2018



Deputy Upper Tribunal Judge Alis

FEE AWARD
TO THE RESPONDENT

I do not make a fee award as I have dismissed the appeal.

Signed

Date 15/02/2018

A handwritten signature in black ink, appearing to read 'SPAL' with a flourish underneath.

Deputy Upper Tribunal Judge Alis