Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08571/2019

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice	**Decision & Reasons Promulgated**
On 20 January 2020	**On 5 February 2020**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

HSJ
(ANONYMITY DIRECTION IS MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Nadeem, Counsel instructed by Dassaur Solicitors
For the Respondent: Mr S Kotas, Home Office Presenting Officer

DECISION AND REASONS

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

1. The Appellant is a citizen of India and his date of birth is 20 May 1980. I have anonymised the Appellant. Neither party addressed me on this issue. However, having considered Rule 14 (7) of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1: Anonymity Orders, I conclude that the making of an anonymity order in this case is appropriate.

2. On 20 August 2018 the Appellant made an application for leave to remain on human rights grounds. This was refused by the Secretary of State on 30 April 2019.

3. The Appellant appealed against the decision of the Secretary of State. His appeal was dismissed by Judge of the First-tier Tribunal (FtT) Row in a decision that was promulgated on 6 August 2019, following a hearing on 31 July 2019. Permission was granted to the Appellant on 14 November 2019 by Judge of the FtT Keane. The matter came before me to determine whether the judge had made an error of law.

The decision of the FtT

4. The judge referred to the Appellant's immigration history at paragraph 8. This is set out in the Reasons for Refusal Letter. The Appellant came into the UK unlawfully on 20 August 2007. He has never had lawful leave at any time throughout his stay.

5. The judge heard evidence from the Appellant. There was medical evidence that the Appellant was suffering from depression and anxiety. The judge said at paragraph 6 that he would treat the Appellant as a vulnerable witness and he took into account his condition when assessing the evidence. His evidence before the judge was that he has not been in touch with his parents in India since 2007 because they had disagreed with his decision to come to the UK. He has siblings in Canada with whom he has contact. He does not have any assets or money in India. He was supporting himself here in the UK with the assistance of friends and the Sikh Temple. He had worked here in the UK. The Appellant's evidence was that he has been diagnosed with depression and prescribed antidepressants. He said that treatment was available in India but he would have to pay for it. The quality of treatment was better in the UK.

6. The judge had before him a letter from the Appellant's GP and a report prepared by a consultant psychiatrist Dr Hussain. The judge noted at paragraph 12 of his decision that the Appellant's GP said that there was nothing wrong with the Appellant and he did not suffer from any medical problems. The Appellant's evidence before the judge was that he had been complaining to his GP for many years that he was not well but his GP had refused to do anything about it and in these circumstances he had instructed Dr Hussain on a private basis.

7. The judge said the following about the evidence of Dr Hussain:

> "15. Dr Hussain found that the appellant was sad throughout the interview. There were signs of slowness of movement and thought. His speech was slow. The quantity of speech was standard. He was able to engage. His mood was subjectively and objectively low. His effect was sad and blunted in intensity. There were no psychotic symptoms. There were no hallucinations or perceptual dysfunction. He was orientated in time place and person. His attention span was normal. His concentration fluctuated. There were no signs of cognitive impairment or dysfunction.
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> 16. Dr Hussain was of the opinion that the appellant suffered from anxiety and a depressive disorder. He recommended that he take mirtazapine, a standard first-line antidepressant. He thought he might benefit from cognitive behaviour therapy. There was a risk of deterioration of the appellant's condition if he did not comply with the treatment. Further exposure to a stressful situation might aggravate his symptoms. He felt he was not in a fit state to travel at the date of the report. If the appellant complied with his treatment, and if his fears of having to live a vulnerable and destitute life in India were limited, his prognosis would be satisfactory."

8. The judge found at paragraph 18 that the Appellant had been diagnosed with depression and anxiety and that he was receiving appropriate treatment. The judge noted that India has its own health service and first-class medical facilities are available there. The judge found that there was no evidence to show that the Appellant would not be able to obtain relevant care in India.

9. The judge said as follows at paragraph 19:

> "The appellant's condition without treatment in the United Kingdom does not appear to have inhibited his ability to function. He has been able to form relationships. He has been able to work. He has managed to support himself. Counsel for the appellant confirmed that the appellant had financed the obtaining of the medical report. He had also paid privately for his legal representation. By whatever means the appellant has been able to finance and support himself in the United Kingdom."

10. The judge concluded that there was no reason why a person who had been able to do all of the above would have any problem integrating into India and therefore the Appellant does not meet the requirements of paragraph 276ADE(1)(vi).

11. The judge concluded that the Appellant does not meet the requirements of the Immigration Rules and that this weighed against him when assessing

proportionality. The judge found that the Appellant's private life could be continued in India. He had regard to Section 117B of the Nationality, Immigration and Asylum Act 2002. He found that there was no evidence that the Appellant is financially independent although he accepted he is capable of being so. He found that the Appellant's private life has been established at a time when his status was "at best" precarious and for most of the time unlawful. For this reason he attached little weight to it.

12. The judge concluded that the public interest in the removal of the Appellant outweighed any interference with his private life.

The Grounds of Appeal

13. The grounds assert that the judge failed to consider the Appellant's circumstances and the extent of his ill health when considering the Immigration Rules and proportionality. Reference is made to the Home Office policy guidance entitled Family policy, family life, (as a partner or parent) private life in exceptional circumstances, version 1.0 issued 25 July 2009.

14. The judge erred when considering the medical evidence. At paragraph 14 the judge said that Dr Hussain did not say when he had seen the Appellant whereas the date of the assessment is given at page 36 of the medical report as 13 July 2019.

15. It is asserted that Judge Row "attempts to limit and summarise the Appellant's medical symptoms" in contrast to what is said by Dr Hussain at page 6 of his report as follows:

> "Furthermore, he considers that his life has been unbearable after facing the risk of his forced removal to India, where he will not be able to survive in the absence of any kind of support and he will also be not able to bear his detachments from the UK, and he is emotionally so attached to this place. He says he is able to live a healthy life in the UK and if he is forcibly, he would kill himself instead of having to live a life of a destitute person in India."

16. The judge set out his own prognosis at paragraph 16 of the decision. The judge said "If the appellant complied with his treatment, and if his fears of having to live a vulnerable and destitute life in India were limited, his prognosis would be satisfactory." However Dr Hussain said as follows at page 9 of his report:

> "… Also, a further exposure to any stressful situation, which he is likely to face if his forced removal from the UK becomes imminent, may aggravate his symptoms up to high level of risk. [the Appellant] has expressed thoughts and ideas of self-harm; therefore this risk is likely to escalate if he returns to face the distressing situation in any unsafe environment."

17. It is asserted that not only has the judge not properly considered the findings of Dr Hussain but also the Appellant's evidence and reference is made to paragraph 22 of the Appellant's witness statement of 19 July 2019 which states as follows:

> "I have not stepped foot in India for over fourteen years and have spent the majority of my adult life in the United Kingdom. I have no savings, employment, or assets in India. My parents are no longer in contact with me, they are disappointed and embarrassed by the way I was misled and are almost in disbelief. My parents have given me their life savings of which I have nothing to show for. I have not spoken to my parents since 2007. My parents have previously stated that I am no longer welcome back into the family home. At present despite numerous attempts to contact them, I am unaware as to where they are residing. The whole experience has been devastating and has truly turned my life upside down."

18. Judge Row has not correctly applied the test of "very insurmountable obstacles" with regard to the Appellant's specific circumstances and the test of proportionality.

Submissions

19. Mr Nadeem made submissions. He conceded that the ground relating to the judge having made his "own prognosis" was incorrect in so far that what the judge said in paragraph 16 was what Dr Hussain had said in his report. He said that the judge had made inadequate findings of fact. He had not engaged with the risk of suicide as found by Dr Hussain when assessing very significant obstacles and Article 8 generally. There were no findings about whether he needed family or social support on return. Mr Nadeem relied on Kamara v SSHD [2016] EWCA Civ 813. He said that the Appellant needs antidepressants and CBT.

20. Mr Kotas submitted that if the Appellant receives treatment his outlook is good and there was no evidence that there would not be treatment available to him in India. Whilst it is difficult to go back to India, the evidence did not establish very significant obstacles. There was very little in the Appellant's Article 8 claim and s.117B of the 2002 Act does not assist him.

Conclusions

21. This was an appeal under Article 8 and not Article 3. Mr Nadeem addressed me as if this was an appeal under Article 3. The relevant test in relation to the Immigration Rules was that under paragraph 276ADE (1) (vi), namely very significant obstacles to integration (not insurmountable obstacles as asserted in the grounds of appeal).

22. The matter identified by the Appellant as capable of presenting very significant obstacles to integration are mental health problems (including

a risk of suicide), estrangement from his family and the length of time he has been here. At section 4 of his report Dr Hussain recorded that the Appellant had told him that he had attempted suicide by cutting his wrist and that he showed him the marks. The Appellant told him that he banged his head against the wall and as a result he sustained a head injury which required hospital treatment.

23. Dr Hussain said that the Appellant's symptoms fulfil the criteria of mixed anxiety and depressive disorder classified as F41.2 under the ICD-10 classification of mental Behavioural Disorder. Relevant symptoms include thoughts of self-harm. In section 8 of the report Dr Hussain recommends antidepressants and psychological intervention. In his recommendation he said that "His present risk of self-harm is already high and if the current symptoms are left untreated his condition may worsen to the extent that it becomes resistant to treatment and also risk of self -harm may increase significantly". In section 9 of the report Dr Hussain says that there is a risk of deterioration in his mental health should the Appellant fail to comply with treatment and that a further exposure to any stressful situation which he is likely to face if his forced removal becomes imminent may aggravate his symptoms up to a high level of risk. Ideas of self-harm are likely to escalate. If he complies with treatment and the fear of removal removed his prognosis is satisfactory. He concludes that the Appellant is not fit to travel "in circumstances where his symptoms will be aggravated".

24. Whilst the judge did not engage with all aspects of the report when assessing Article 8, I find that any error is not material to the outcome. The judge accepted the diagnosis made by of Dr Hussain. However, he did not accept that he was not fit to fly or the prognosis. He was entitled to form this view in the light of the evidence from the Appellant's GP that indicated that there was nothing wrong with the Appellant. Furthermore, Dr Hussain had not had sight of any of the Appellant's medical records. The Appellant was not receiving treatment and the judge made findings at [19] of the decision which are grounded in the evidence and reasoned. There was no evidence that he had received treatment for mental health issues whilst in the UK during which time he has formed relationships and worked. The judge was also entitled to infer from the evidence that the Appellant had been able to finance and support himself here in the UK.

25. In respect of the prognosis and recommended treatment, there was no evidence that the Appellant would not be able to access treatment in India and the judge's findings at [18] are lawful. Whilst is clear is that the judge had well founded reservations about the extent of Dr Hussain's evidence, he did not and should have specifically engaged with the evidence about self-harm. However, the evidence was vague. There was no evidence backing up what the Appellant told Dr Hussain about previous suicide attempts. He indicated that he had received hospital treatment for a self-inflicted head injury. It is extraordinary, in my view, that Dr Hussain did not wish to see evidence in support of this, particularly in the light of the GP having said that there was nothing wrong with the Appellant. The report does not indicate the date of the self-harm or the reasons behind it.

The lack of enquiry into the incidents of self-harm/suicide is a serious omission in the report and undermines the prognosis made by Dr Hussain. There was insufficient evidence that there is a real risk of the Appellant committing suicide should he be removed.

26. Despite there being no appeal under Article 3, Mr Nadeem addressed me on the case of J v SSHD [2005] EWCA Civ 629. I do not know whether the case was relied on before the FtT. In any event, the evidence before the judge the Appellant cannot meet the first test. The severity of the treatment that the which the Appellant would suffer if removed does not attain a minimum level of severity. (The ill-treatment must "necessarily be serious" such that it is "an affront to fundamental humanitarian principles to remove an individual to a country where he is at risk of serious ill-treatment": see Ullah v SSHD [2004] UKHL 26, paras [38-39]). In this case the evidence does not establish that there is a real risk of suicide should the Appellant removed. In any event, there was insufficient evidence that treatment would be unavailable and or inaccessible to the Appellant on return to India. There is no cogent evidence that the Appellant would need social support or family support in order to access treatment.

27. I am sure that if the Appellant's solicitors genuinely thought that there was sufficient evidence to meet the test in J , he would have been advised to make a claim on Article 3 grounds or to at least appeal against the decision on Article 3 grounds. Whilst the evidence establishes that the Appellant has depression and anxiety which may be exacerbated by the prospect of removal, the judge's finding about available treatment on return was one that was open to him on the evidence. It is not challenged in the grounds.

28. The Appellant's evidence is that he had no family in India and that he is estranged from his parents. He does not have a wife or partner or wider family here. He has friends here. There is no evidence from his friends before the judge. There is no evidence to support the Appellant's assertion that his friends are like family. The Appellant has been here since 2007. He entered unlawfully and has never had leave. He has been here for 12 years. His evidence is that before coming to the UK he lived in Paris for 3 years, having left India 14 years ago.

29. In Kamara v SSHD [2016] EWCA Civ 813 the Court of Appeal considered the very significant obstacles test in the context of s.117C (4) of the 2002 Act. The test under paragraph 276ADE (1) (vi) is the same. At [14] Sales LJ said as follows:-

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C (4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament

has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

30. Whilst the Appellant has been out of India for 14 years, the evidence was not capable of establishing very significant obstacles to integration. He is an Indian citizen. He was aged 25 when he left India. He was well into adulthood and must be familiar with life there. He speaks the language and there is no reason for him not to find work there. Whilst he is estranged from his family in India, there is no evidence of family ties here and the Appellant has managed to support himself and work and form relationships. His mental health has not prevented him from doing so. There is no reason why he could not form relationships in India. There is no reason why he cannot access treatment for his mental health in India.

31. The Appellant is not able to meet the Rules.

32. The Appellant relies primarily on health as a reason why his removal would breach his private life. His evidence in support of this was Dr Hussain's report. What weight to attach to the evidence was a matter for the judge. For the reasons I have identified that report does not establish that the UK would breach Article 3 when returning the Appellant to India. In GS (India) 2015 EWCA Civ 40; the Court of Appeal considered the relationship between the Article 3 criteria and the Article 8 criteria in the context of healthcare cases. The court held that "article 8 cannot prosper without some separate or additional factual element which brings the case within the article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with the paradigm." On the other hand, "degrading treatment" within the meaning of Article 3 must have "a minimum level of severity" and the threshold is high. By contrast, as Laws LJ had held Article 8 seeks to protect family and private life and is concerned with the quality of life. It is a very wide provision and rights conferred by it inevitably conflict with the rights and interests of others, including those derived from the ECHR, and the public interest. The threshold of engagement of Article 8 is low but as Lady Hale said in Razgar [2004] UKHL 27, there must be a strong healthcare case before Article 8 is even engaged. Once Article 8 is engaged, a balancing exercise must be conducted. Because interference by the state on lawful and necessary grounds is possible, the focus and structure of Article 8 is distinct from Article 3.

33. The Appellant cannot meet Article 8 as informed by the Rules. He does not have a strong healthcare case. He relies on his private life. He has been here for 12 years and has friends here. These facts together with the diagnosis of anxiety and depression and his estrangement from his family in India do not amount to a strong private life claim. The judge found that he would have access to treatment. That finding is sound. The evidence is not sufficient to establish a risk of suicide for the reasons given above. The Appellant has not identified evidence capable of amounting to compelling circumstances. The Appellant has never had lawful leave here. Properly applying s.117B of the 2002 Act, the decision to remove the Appellant is proportionate. Any error by the judge is not material to the outcome in the case.

34. It is unarguable that the Home Office guidance identified in the grounds of permission are of any assistance to the Appellant. This was not pursued in oral submissions. In addition, that the judge seemed not to have realised that the date of Dr Hussain's assessment was the date when he had seen the Appellant, namely 13 July 2019, is not material.

35. The decision of the FtT to dismiss the appeal on Article 8 grounds is maintained.

Notice of Decision

The appeal is dismissed on human rights grounds.

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

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

Signed Joanna McWilliam Date 28 January 2020

Upper Tribunal Judge McWilliam