



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

Appeal Number: HU/02664/2020

THE IMMIGRATION ACTS

**Heard at Field House
Remotely by Microsoft Teams
On 9 December 2021**

Decision & Reasons Promulgated

On 24 January 2022

Before

UPPER TRIBUNAL JUDGE OWENS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**SYED SAJJID HUSSAIN SHAH
(Anonymity Direction Not Made)**

Respondent

Representation:

For the Appellant: Mr Walker, Senior Home Office Presenting Officer
For the Respondent: Mr Gajjar, Counsel instructed by Law Lane Solicitors

DECISION AND REASONS

1. The Secretary of State appeals against a decision of First-tier Tribunal Judge Clarke sent on 24 March 2021, allowing Mr Shah's appeal on Article 8 ECHR grounds against a decision dated 3 February 2020, refusing his human rights claim.
2. The hearing was held remotely. Both parties requested an oral hearing and did not object to the hearing being held in this manner. Both parties participated by Microsoft Teams. I am satisfied that a face-to-face hearing could not be held because it was not practicable and that all of the issues

could be determined in a remote hearing. Neither party complained of any unfairness.

Background

3. Mr Shah is a Pakistani national born on 31 January 1963. He entered the UK on 20 April 2002 as a visitor. Mr Shah applied to remain in the UK on 1 December 2020. The application was refused with no right of appeal. He made further representations on 21 May 2015 which were refused and certified. He then made further applications for leave to remain on the basis of his private life on 8 February 2016, 31 October 2017 and 29 November 2018 all of which were refused. His most recent application was made on 22 May 2019. This was refused in the decision dated 3 February 2020 which is the subject of this appeal.
4. Mr Shah asserts that he has established private life in the UK. There are very significant obstacles to his reintegration with Pakistan. Alternatively, it would be a disproportionate breach of Article 8 ECHR to remove him from the UK. He has lived in the UK for over 19 years, is a middle-aged widower and has health problems.
5. The application was refused on the basis that it was not accepted that there would be very significant obstacles to his integration to Pakistan. He resided there until the age of 38 and retains knowledge of the life, language and culture. He has a daughter in Pakistan. He can obtain medical treatment for mixed anxiety and depressive disorder in Pakistan. There are no exceptional circumstances which would render the refusal a breach of Article 8 ECHR because it would result in unjustifiably harsh consequences.

The decision of the First-tier Tribunal

6. The judge heard evidence from Mr Shah and a witness whom she found to be credible and reliable witnesses. The judge found that Mr Shah had lived in the UK for a continuous period of over 19 years. His son lives in Kuwait, and he does not have contact with his two daughters in Pakistan. The judge found that Mr Shah would experience very significant obstacles on his return to Pakistan because of the length of his absence, his age, his lack of family ties, his inability to find work and his poor mental health. The judge allowed the appeal on Article 8 ECHR human rights grounds.

Appeal to the Upper Tribunal ('UT')

7. The grounds of appeal are as follows:

- (1) *Inadequate reasons*

It is said that the judge has erred by finding that there would be very significant obstacles to Mr Shah's reintegration to life in Pakistan. It is said the 39 years he lived in Pakistan outweigh the 19 years he has lived in the UK. He has lived in

the UK for many years without family support and he can do the same in Pakistan. It is said that Mr Shah has some skills and that he can find a driving job to earn a living. There is no documentary evidence to corroborate that friends are financially supporting him and little weight should be placed on his bank statements. Money can be sent to him in Pakistan.

(2) *Error in relation to Article 3 ECHR caselaw*

Mr Walker accepted at the outset of the appeal that this ground was not relevant because Mr Shah had not submitted that it would be a breach of Article 3 ECHR to return him to Pakistan and the judge made no findings in respect of Article 3 ECHR.

Permission to appeal

8. Permission was granted by First-tier Tribunal Judge Parkes on 14 May 2021. He stated:

“In terms of there being very significant obstacles to the Appellant’s return to Pakistan it is difficult to see what they are. (sic) His circumstances on return would be the same as those he faced on entry to the UK but with the advantage of being there lawfully.” “It is arguable that the judge was wrong to find that the appellant’s circumstances justified a grant of leave”.

9. The grant of permission was not limited.

Rule 24 response

10. The appellant submitted a lengthy rule 24 response in which it is argued that the judge had in fact considered the evidence, made findings of fact grounded in the evidence and given adequate reasons why there are very significant obstacles to the appellant reintegrating to Pakistan.

Discussion and Analysis

11. Mr Walker did not vigorously attempt to defend the decision and did not add anything in oral submissions to the written grounds of appeal. He acknowledged that the grounds of appeal read more like further or closing submissions disagreeing with the judge’s decision and factual findings. For instance, it is said in the grounds:

“**I submit** that the appellant lived in rented accommodation in Pakistan and was working as a government driver, there is a high probability that he can obtain driving work in Pakistan to earn a living (my emphasis).”

12. In my view this is a submission rather than a particularised assertion of an error of law.
13. Similarly, it is said:

“There is no documentary evidence to corroborate friends are financially supporting. Little weight should be placed on the appellant’s bank statements..... In any event, if Tribunal (sic) were to accept friends are financially supporting the appellant, **I submit** money can be sent to the appellant in Pakistan. (my emphasis).

14. This also reads as a closing submission rather than a ground of appeal.
15. The remainder of the grounds relate to Article 3 ECHR which was never at issue in this appeal as Mr Walker concedes. In these circumstances the ground in relation to Article 3 ECHR is misconceived and is not made out.
16. The grounds in my view amount to a reasons challenge either to the judge’s findings of fact or to the judge’s conclusions that there were very significant obstacles or alternatively a (very vague and unparticularised) assertion that the judge has misdirected herself in law.
17. Mr Gajjer submitted that there is no material error and that the Secretary of State is struggling to find an argument. He submits that the judge gave a balanced and detailed consideration of the evidence and made cogent and sustainable findings based on that evidence which were open to her. She gave adequate reasons for her findings and her decision that there were very significant obstacles was adequately reasoned and not perverse.
18. I agree with Mr Gajjer. There is no challenge to any specific findings of the judge. The judge’s factual findings appear from [7] onwards. The judge had before her a bundle of evidence including witness statements and medical evidence. She heard oral evidence from Mr Shah and a witness. The witnesses were cross examined. She had sight of the “sea of evidence”.
19. At [6] the judge gives reasons for finding Mr Shah and his witness to be credible. She refers to the fact that they gave consistent answers, and that Mr Shah was candid that he worked for friends in the UK. This is manifestly adequately reasoned.
20. The judge found that Mr Shah had lived in the UK for a continuous period of well over 19 years arriving at the age of 38. This is not in dispute. The judge found that Mr Shah’s wife died in 2015 and that he has three adult children, a son in Kuwait and two daughters in Pakistan. The judge accepted Mr Shah’s evidence that he is no longer in contact with his children because they took his wife’s side when they separated many years ago. She found that Mr Shah has no close family in Pakistan. These findings are not challenged by the Secretary of State, and I am satisfied that they were open to the judge.
21. The judge accepted Mr Shah’s evidence that he relies on his friends to meet the costs of his accommodation and food and that sometimes he carries out cleaning and gardening jobs for them. The judge found that it was likely that his friends gave him money for casual work and that it

would be less likely that they would remit money to him in Pakistan given both the distance and the fact that Mr Shah would no longer be carrying out casual work for them. I am satisfied that these findings are adequately reasoned. There is reference in the grounds to the bank statements in the original appellant's bundle. It is submitted that there is no clarity to deposits in the accounts. It is not clear whether this is a new submission or whether Mr Shah was cross-examined on this during the appeal. In any event the ground is not particularised.

22. The judge accepted on the evidence before her at [8] that Mr Shah has medical issues including mixed anxiety and depression. The judge takes into account at [9] that although the medical report prepared by Dr Mukhtar is not recent, the GP confirms that Mr Shah still receives medication for the same diagnosis. The evidence before the judge was that Mr Shah's dose of citalopram increased from 20mg in 2018 to 30 mg in January 2020 to 40 mg in July 2020 indicating that his condition has deteriorated. The judge noted that the appellant still takes medication. The judge notes that although the psychiatrist identified a risk of self-harm Mr Shah has not harmed himself. The judge takes into account the availability of medical care in Pakistan which she finds is free and private and views this in the round with Mr Shah's ability to integrate. The judge also had evidence before her from Mr Shah and the witness that Mr Shah feels low and suicidal. The witness gave evidence that he has seen Mr Shah being very depressed and that he and his friends in the UK have provided Mr Shah with emotional and practical support when he has been ill such as shopping, laundry and assistance with collecting his medication.
23. I am satisfied that the judge's findings in relation to Mr Shah's poor mental health and the availability of treatment in Pakistan are sustainable and grounded in the evidence.
24. The reasons that the judge gives for Mr Shah experiencing very significant obstacles are follows:
 - i. The absence of over 19 years since he returned to Pakistan
 - ii. He would be returning at the age of 57 when he left at the age of 38
 - iii. His complete lack of family ties in Pakistan and the fact that he has no contact with his daughters
 - iv. He was able to cope when he first came to the UK because he was a much younger man
 - v. He will have difficulty given his age now in accessing accommodation and finding work even though he has some skills. His mental health would exacerbate this situation and make it harder for him to find work.
 - vi. The reluctance experienced by individuals in Pakistan to obtain psychiatric help because of the taboo attached to this and the

impact of his poor health on a returning single man with no family or friends having spent the last 19 years in the UK.

vii. The appellant would find it harder to access the necessary mental health he needs because of his circumstances.

25. I have had regard to the various authorities in relation to the adequacy of reasons and interference with factual findings. I refer to the words of Dingemans LJ in Terghazi v SSHD [2019] EWCA Civ 2017 at [45];

“A further principle which it is relevant to note is that, even if an appellate court is entitled to hear an appeal because of an error of fact (because the appeal court has jurisdiction to hear appeals on facts) appellate courts should be very cautious in overturning findings of fact made by a first instance judge. This is because first instance judges have seen witnesses and take into account the whole “sea” of the evidence, rather than indulged in impermissible “island hopping” to parts only of the evidence, and because duplication of effort on appeal is undesirable and increases costs and delay. Judges hearing appeals on facts should only interfere if a finding of fact was made which had no basis in the evidence, or where there was a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence so that the decision could not reasonably be explained or justified”.

26. I am not satisfied that there was a demonstrable misunderstanding by the judge of the evidence nor that there was a failure to consider relevant evidence. The findings cannot be said to be either inadequately reasoned, nor can they be said to be “perverse” or “irrational” which is a demanding concept with a high threshold. The respondent did not suggest that the findings were irrational.

27. I am satisfied that the judge was properly entitled to be able to make the above findings.

28. There is no specific pleaded ground of appeal that the judge has misapplied the law by failing to apply the correct test other than an assertion that “the appellant has failed to show that there would be very significant obstacles”. The judge had before her in the original appellant’s bundle a skeleton argument prepared by Mr Gajjar. This set out the relevant legal test in respect of “very significant obstacles” which can be found in SSHD v Kamara[2016] EWCA Civ 813. The judge confirms that she has had sight of the appellant’s bundle at [4]. My view is that the Secretary of State has failed to identify how the judge failed to adhere to the test. It is not incumbent on a judge to set out the test word by word, but to demonstrate in the decision that she has understood the test. I remind myself of the principles set out by Lady Hale at [30] in AH (Sudan) v SSHD [2007] UKHL 49. A considerable degree of deference must be given to a specialist Tribunal which will be assumed to have directed itself appropriately even if the decision is not perfectly expressed or a judge has

not expressly set out every step. I am satisfied that the judge was aware of the correct legal test and did not misdirect herself.

29. I am also satisfied that the judge has given adequate reasons for finding that there would be very significant obstacles to Mr Shah reintegrating to Pakistan.

30. I take into account the words of Reed LJ in Henderson v Foxworth Investments Ltd [2014] UKSC 41 at [62];

“It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.”

31. I also remind myself of the comments of Carnworth LJ in Mukarkar approved by the Supreme Court in MM (Lebanon) 2017 SC10 that;

“The mere fact that one tribunal has reached what may seem an unusually generous view of the facts of a particular case does not mean that it has made an error of law, so as to justify an appeal under the old system, or an order for reconsideration under the new... However on the facts of a particular case the decision of a specialist tribunal should be respected”.

32. It may have been that another judge would have taken a less generous view of whether Mr Shah would face very significant obstacles to his integration, but the alleged generosity of this decision does not render the decision unlawful.

33. My view is that the grounds amount to no more than a disagreement with the decision.

Conclusion

34. It follows that none of the Secretary of State’s grounds of appeal are made out and the Secretary of State’s appeal is dismissed.

Decision

35. The decision of the First-tier Tribunal allowing the appeal is upheld.

Signed

Date

UTJ Owens
Upper Tribunal Judge Owens

20 January 2022