



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

Appeal Number: HU/04799/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 31 March 2022**

**Decision & Reasons Promulgated
On 22 September 2022**

Before

**UPPER TRIBUNAL JUDGE SHERIDAN
DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

Between

**QASIM SUBHANI
(NO ANONYMITY DIRECTION IS MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Karim, Counsel instructed by Law Lane Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the re-making of a decision of the First-tier Tribunal that was set aside on 14 December 2021.

Background

2. The appellant is a citizen of Pakistan who is married to a British citizen, Mrs Akhter. On 5 February 2020 the appellant applied for leave to remain in the UK on the basis of his family life with Mrs Akhter. On 13 March 2020 the application was refused.
3. The respondent accepted that the appellant and Mrs Akhter are in a genuine and subsisting relationship but did not accept that there would be insurmountable obstacles to the relationship continuing in Pakistan or that the appellant's removal to Pakistan (whether or not Mrs Akhter joined him) would violate Article 8 ECHR.

4. The question of whether the appellant's removal would breach Article 8 ECHR was previously considered by Judge of the First-tier Tribunal Lawrence in a decision promulgated on 23 August 2019. Judge Lawrence accepted that the appellant and Mrs Akhter were in a genuine and subsisting relationship but found that there would not be insurmountable obstacles to the relationship continuing in Pakistan.
5. The most significant issue before Judge Lawrence was the mental health of Mrs Akhter. The evidence before him was that she suffered from anxiety, depression and OCD. At paragraph 43 of his decision Judge Lawrence, having accepted the evidence about Mrs Akhter's mental health, found:

"There is no medical evidence that directly suggests that a disruption to Ms Akhter's treatment, or that relocation to Pakistan, would have an adverse effect on Ms Akhter."
6. Following his unsuccessful appeal before Judge Lawrence (and the subsequent refusal of permission to appeal), on 5 February 2020 the appellant made further submissions. These were refused on 13 March 2020.
7. The appellant appealed against the respondent's decision and his appeal came before Judge of the First-tier Tribunal Bird. The decision of Judge Bird was set aside in its entirety save that the following findings of fact were preserved: (a) the appellant and Mrs Akhter are in a genuine and subsisting relationship; and (b) the appellant has maintained contact with his family and he and Mrs Akhter would have their support on return to Pakistan.
8. We now re-make the decision of Judge Bird.

The evidence

9. At the hearing, we heard evidence from the appellant and Mrs Akhter.
10. The evidence of the appellant was that Mrs Akhter suffers from serious mental health problems and that he provides her with a substantial amount of care. He maintains that he effectively is her "full-time carer", despite the fact that she works full-time for the Probation Service. He summarised the nature of the care he provides to her as taking her to and from work (although he later stated that she often uses a taxi to travel to work), shopping and preparing food, helping her with her medication, and being with her at night. He explained that during the night the appellant will often wake up several times and that she needs his comfort and support in order to sleep and avoid panicking or potentially harming herself.
11. He stated that he does not have contact with family in Pakistan. He stated that he has not been in touch with any of his family for at least two years.

12. We now turn to the evidence of Mrs Akhter. Before she gave evidence we emphasised that she needed to be treated as a vulnerable witness. Mr Lindsay cross examined her in an entirely appropriate way.
13. Mr Lindsay asked Mrs Akhter about her mental health problems. She described hearing voices at night, suffering from bad dreams and living in fear of leaving the house on her own, other than going to work where she receives support. She described her condition as “going up and down” with no clear pattern. When asked what the appellant does for her, she described how he calms her at night, holding her hand, and supports her to return to sleep.
14. She also described how the appellant does housework and cooking and will speak to doctors on her behalf. She described having a supportive relationship with her family in the UK but that her mother is elderly and her sisters have their own families, so although she sees them frequently, they are unable to provide the same type of support that the appellant provides to her.
15. She stated that if her husband were to go to Pakistan without her she would be “a shattered mess” and would feel that there was no point in carrying on. She stated that she could not go to Pakistan because she would have no family support and people would think she was possessed. She also stated that she did not see how she would be able to find work there and she feared that she would be unable to obtain, or afford, the medication that she relies on.
16. Medical evidence, including a report by consultant psychiatrist Dr Mukhtar, was relied on to substantiate Mrs Akhter’s evidence about her mental health.

Submissions

17. Mr Lindsay submitted that the evidence of the appellant was not credible. He noted that he claimed to be a full-time carer for Mrs Akhter when plainly this was not the case, given that she works full-time. He also noted that the finding of Judge Bird that the appellant is in contact with his family in Pakistan was preserved, the implication of this being that the appellant had lied.
18. However, Mr Lindsay stated that no issue was taken with the credibility of the evidence given by Mrs Akhter.
19. He also stated that whilst there were reasons to criticise the report of Dr Mukhtar (in particular because he had not complied with the Practice Direction of the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, paragraph 10.9, which, inter alia, requires an expert to set out the substance of all facts and instructions given), no challenge was made to the medical evidence.

20. Mr Lindsay began his submissions by setting out the three issues that needed to be determined:
21. whether there are insurmountable obstacles to the relationship between the appellant and Mrs Akhter continuing in Pakistan such that paragraph EX.1 is satisfied;
22. whether it would be proportionate to remove the appellant in circumstances where he would be granted entry clearance to re-enter the UK (the *Chikwamba* principle); and
23. whether, more broadly, removal of the appellant is proportionate under Article 8 ECHR.
24. Mr Lindsay acknowledged that if the appellant succeeded in respect of the first issue (insurmountable obstacles) that would be determinative of the appeal in his favour for the reasons given in [*TZ \(Pakistan\) and PG \(India\) v. Secretary of State for the Home Department \[2018\] EWCA Civ 1109*](#): “if a case meets the requirements of the Rules, then if article 8 is engaged this positively determines the question of proportionality in an appellant’s favour”.
25. Mr Lindsay noted that insurmountable obstacles is a demanding threshold. He stated that in his view the key issue in the appeal was Mrs Akhter’s mental health. He accepted that Mrs Akhter had a serious mental health condition which the evidence showed had become substantially worse since the decision of Judge Lawrence. He drew attention to Mrs Akhter’s medical records from Birchdale Road Medical Centre. In the printout of the records (page 1 of 105) there are a list of significant past problems. These include depression (listed on 4 April 2019) and adjustment disorders (listed on 11 March 2019). Mr Lindsay noted that these were the conditions from which Mrs Akhter suffered at the time of the hearing before Judge Lawrence. He noted that under the heading “active problems”, with a date of 6 October 2020, the following is listed: “recurrent major depressive episodes, severe, with psychosis”. Mr Lindsay acknowledged that the diagnosis on 6 October 2020 of recurrent major depressive episodes, severe, with psychosis is significantly more serious than those prevailing at the time of the decision by Judge Lawrence.
26. He also noted that Dr Mukhtar’s report, which is dated 20 February 2020, states that Mrs Akhter’s condition has “been getting progressively worse over the last few months”. Mr Lindsay stated that Dr Mukhtar’s report, considered together with the up-to-date medical records, establishes that there is a good reason to go beyond Judge Lawrence’s assessment in respect of Mrs Akhter’s mental health.
27. Mr Lindsay argued that although Mrs Akhter clearly has significant mental health problems they are nonetheless not sufficient for the insurmountable obstacles threshold to be met. He relied on the Country Policy and Information Note Pakistan: Medical and healthcare provisions, Version 2,

September 2020 (“the CPIN”), which, he argued, shows that appropriate psychiatric and medical care is available in Pakistan. He recognised, however, that there is a stigma attached to mental health problems in Pakistan and drew attention to paragraph 4.12.6 of the CPIN where it is stated:

“Similarly, The News International noted in February 2020 ‘[S]eeking help for psychological disorders is problematic in Pakistan. Mental illness is often associated with supernatural forces such as witchcraft, possession, and black magic. Families often hide mental illness to prevent the patient from adverse stereotyping.’”

28. Mr Lindsay concluded his argument in relation to insurmountable obstacles by stating that although the respondent does not positively accept the medical evidence, she also does not challenge it and there is no real disagreement about the difficulties Mrs Akhter would face in Pakistan. He submitted that these difficulties, significant though they are, were insufficient to reach the threshold of insurmountable obstacles.
29. Mr Lindsay then made his submissions in relation to what he characterised as the “*Chikwamba* point”. He accepted that the appellant would be likely to succeed in an application made from Pakistan. He acknowledged, however, that because of the crisis in Ukraine there are delays in dealing with applications for family union. He submitted an extract from the gov.uk website on visa processing times where it was indicated that because of the current crisis in Ukraine it might take longer than the normal twelve weeks. Mr Lindsay acknowledged that this could present difficulties for Mrs Akhter, given that being separated from the appellant for this length of time might be detrimental to her mental health and may have an impact on her employment, in which case she may cease to earn sufficient money to reach the relevant eligibility threshold.
30. Mr Lindsay then briefly touched on Article 8 outside the Rules, arguing that, having regard to all of the relevant factors, removal of the appellant would not breach Article 8.

Analysis

31. After hearing Mr Lindsay’s very helpful and comprehensive submissions we rose to consider the matter. Upon return, we informed Mr Karim that we would not need to hear from him as we were satisfied that the insurmountable obstacles threshold was met.
32. The relevant question under paragraph EX.1 of Appendix FM is whether there are “insurmountable obstacles to family life” between the appellant and Mrs Akhter continuing outside UK. EX.2 explains:

“For the purposes of paragraph EX.1.(b) ‘insurmountable obstacles’ means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and

which could not be overcome or would entail very serious hardship for the applicant or their partner.”

33. Mrs Akhter suffers from a serious mental health condition: recurrent major depressive episodes, severe, with psychosis; as set out on page 1 of her medical records from Birchdale Road Medical Centre. She currently manages to live a relatively full life in the UK because she has the support of her family (in particular her mother and sisters, whom she sees regularly), and works in a supportive environment where her needs are accommodated.
34. Neither of these protective factors would be available in Pakistan. On the contrary, in Pakistan it is unlikely that she would find a workplace that provides sufficient accommodations for her and she would not have any support from her mother and sisters. She would most likely spend her days alone, without work or family to occupy her time; and without the appellant being present, as he would need to work to support them financially. We consider it likely that, in these circumstances, her mental health would deteriorate significantly even though medication would most likely be available.
35. Moreover, Mrs Akhter is likely to face stigma because of her mental health condition. Although the appellant is in contact with and would be able to receive support from his family in Pakistan, the stigma associated with mental health is likely to negatively impact their relationship with Mrs Akhter.
36. In our view, these factors, considered cumulatively, mean that it is likely that Mrs Akhter will face a bleak situation in Pakistan. The difficulties she will face are likely to be very significant indeed and to entail very serious hardship.
37. The threshold in paragraph EX.1 is, as Mr Lindsay emphasised, very high. The particular – and compelling – circumstances of Mrs Akhter are such that we are satisfied that the threshold is met in this case.
38. As there are insurmountable obstacles to the relationship continuing outside the UK and the appellant meets the requirements of the Rules under Appendix FM, it follows (for the reasons set out above in paragraph 21) that removal of the appellant would be contrary to article 8 ECHR and therefore unlawful under section 6 of the Human Rights Act 1998.

Notice of decision

The appeal is allowed

Signed

Date 29 April 2022

D. Sheridan

Upper Tribunal Judge Sheridan