



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

Appeal Number: PA/00677/2020 (V)

THE IMMIGRATION ACTS

**Heard at Field House, London
via Microsoft Teams
On Thursday 11 November 2021**

**Decision & Reasons Promulgated
On Thursday 6 January 2022**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

S S

[Anonymity direction made]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z Harper, Counsel instructed by Sutovic & Hartigan

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

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION

BACKGROUND

1. By a decision promulgated on 24 August 2021, I found an error of law in the decision of First-tier Tribunal Judge Talbot itself promulgated on 3 March 2021 dismissing the Appellant's appeal against the Respondent's decision dated 9 January 2020 refusing his protection claim. My error of law decision is appended hereto for ease of reference.
2. A summary of the Appellant's claims appears at [2] to [4] of my error of law decision and I do not repeat what is there said. At [24] of my error of law decision, I set out the effect of the errors I had found. I preserved Judge Talbot's findings that the Appellant's claimed risk on return based on a relationship in Pakistan was not credible. I preserved up to and including [42] of Judge Talbot's decision in consequence. That part of Judge Talbot's decision also deals with the medical evidence and evidence of the country expert. I will need to refer back to the paragraphs setting out that evidence and Judge Talbot's findings in that regard when considering what remains of the Appellant's claim. My decision set aside paragraphs [43] to [45] containing Judge Talbot's findings specifically relating to the Appellant's mental health. I also set aside paragraphs [46] to [50] of the Decision dealing with the Appellant's Article 8 claim since those findings were potentially impacted by the error made in relation to consideration of the Appellant's claim regarding his mental health. I preserved however [49] of Judge Talbot's decision finding there to be family life between the Appellant and his brother [A] due to the dependency which the Appellant has on his brother.
3. In addition to the documents before me on the previous occasion, as set out at [10] of my error of law decision, I received a skeleton argument from Ms Harper on behalf of the Appellant and one on behalf of the Respondent. I heard detailed submissions from both advocates for which I am very grateful. As a result of the paragraphs of Judge Talbot's decision which I preserved I do not need to set out much of the evidence on which reliance is placed in detail but I have read that which relates to the issues which remain. I refer to the documents as [AB/xx] (in relation to documents in the Appellant's initial bundle), [ABS/xx] (in relation to documents in the Appellant's supplementary bundle) and [RB/xx] (in relation to documents in the Respondent's bundle).
4. Given the accepted mental health condition of the Appellant, I was not asked to hear evidence from him. He attended the hearing remotely from the same address as his brother [A]. [A] produced a further witness statement for the purposes of the hearing before me, dated 2 November 2021. Attached to that statement was a photograph of the medication which the Appellant is currently taking. I will refer to the detail of that below. I heard oral evidence from [A] and he was cross-examined by Mr

Melvin. Again, I refer only to that part of his evidence relevant to the findings I have made. I have however taken account of all the evidence he gave when reaching those findings.

THE ISSUES

5. Ms Harper helpfully set out the issues for determination at [2] of her skeleton argument as follows:
 - (1) Whether the Appellant is a member of a particular social group in Pakistan and risks persecution in breach of the Refugee Convention on account of his mental health.
 - (2) Whether the Appellant risks serious harm on account of his mental health condition, giving rise to a claim for humanitarian protection.
 - (3) Whether the Appellant's removal would breach Article 3 ECHR on account of the risk of deterioration in his mental health condition and/or suicide.
 - (4) Whether the Appellant's removal would amount to a disproportionate interference with his rights under Article 8 ECHR when considered in the context of paragraph 276ADE(1)(vi) of the Immigration Rules ("Paragraph 276ADE(1)(vi)") and his right to private and family life considered outside the Immigration Rules ("the Rules").
6. There is a degree of overlap between those issues. I understood Ms Harper to accept that, when considering issue (1), if I did not accept that the evidence showed that the treatment which the Appellant would face on return amounted to persecution, that would be relevant to whether there was sufficient evidence to make out a claim for humanitarian protection under issue (2). Similarly, of course, if I accepted that the treatment did reach the threshold to amount to persecution, there would be no need to go on to consider humanitarian protection (or indeed the human rights claims). Issue (2) would become relevant if I accepted that the treatment reached the threshold for persecution but did not accept that the Appellant was a member of a particular social group.
7. Before turning to consider each of the issues, and the law relating to each, I set out the evidence so far as it relates to those issues which remain.

EVIDENCE

Witness Evidence

The Appellant

8. The Appellant did not give live evidence either before me or before Judge Talbot due to his mental health problems. I have regard to the guidance given by the Court of Appeal in AM (Afghanistan) v Secretary of State for

the Home Department [2017] EWCA Civ 1123 when assessing the Appellant's own written evidence and the evidence which relies on his self-reporting.

9. The Appellant made two statements dated 7 December 2018 ([AB/3-6]) and 9 October 2020 ([AB/7-16]). He refers to the onset of his depression in 2015 when his leave as a student ran out and he "knew [he] could not return to Pakistan". He says that got worse by the time of his first statement. He there says that he "often [has] suicidal thoughts" but provides no detail about planning or intent and does not say that he has ever attempted suicide. He confirms in his second statement that he has never attempted suicide (§ [72]) and says that if he were returned to Pakistan where he would be without the support of his brother, he "might even contemplate suicide". That does not suggest that he currently (or at the time of his statement) had any formed suicidal intent.
10. Although the Appellant says that he produced his medical history and records, those do not appear in the Appellant's bundle. They are reproduced from 2012 up to late 2018 in the Respondent's bundle ([RB/G and H]). The earliest reference to mental health problems in those notes is in September 2017. That is inconsistent with the Appellant's second statement where he says that the first episode occurred in 2012/13 and that he "then started going to GP" who he says diagnosed stress and said that he might have mental health issues. I appreciate that the Appellant has mental health issues and may well not recall dates but what is there said is more consistent with this episode having occurred much later and in 2017.
11. The medical notes indicate that the Appellant reported fears of self-harm and said in June 2018 that he had attempted suicide with some indication that he had considered various methods. What he there told the doctor though is not repeated in his witness statement and nor is there any evidence in the notes that the Appellant has ever made any serious attempt. He says in June 2018 that his brother stopped him. Neither of [A]'s statements makes any reference to this episode and that report is contradicted by [A]'s statement where he says that he only discovered that his brother had suicidal thoughts when he overheard the Appellant discussing this with the GP. He confirmed in his oral evidence that the Appellant had not attempted to harm himself. The notes also record the Appellant reporting the substance of his protection claim to the doctor. That has now been disbelieved. There is no indication that the doctor took any steps to have the Appellant treated by a specialist. A note of 12 June 2018 indicates that, "[f]ollowing discussion with the team and consultant psychiatrist [the doctor did not] feel that [the Appellant] meets the criteria for Early Intervention Service". The doctor clearly did not take seriously the Appellant's report of a suicide attempt at that time.
12. In his second statement, the Appellant refers to the medication he was then taking (in 2020) (§[3]). He says that the doctor "thought it was a mental issue". When he told his parents, they contacted "some local

religious scholars” who “confirmed that [he has] a problem with jinn”. He said that when he told the doctors “over here”, they did not believe him (perhaps unsurprising given the source of the diagnosis) but he and his family believe that he is “possessed by a jinn”. He says that the local religious scholars were unable to help him.

13. The Appellant says that his mental health would deteriorate if he had to return to Pakistan as he would have no-one to look after him. In terms of treatment, he says that he was waiting to see a specialist (who appears to be a doctor at a medical centre). Oddly given the date of the statement in October 2020 he says that the appointment was due in March 2020. There is no evidence that the Appellant has seen this doctor. The Appellant’s medical notes indicate that the Appellant has on occasion failed to attend appointments when booked.
14. The Appellant also mentions in his statement that he suffers from Polycythaemia Rubra Vera (PRV) which involves a high red blood cell count and fatty liver disease. The latter was apparently picked up in 2018. The former is something which is noted in his medical records as being long-standing (he has a “known history”). He was apparently at some point under the care of Hammersmith Hospital and is on medication, but it was said in 2017 that he had not been followed up for some time. There is no evidence that treatment for either illness is not available in Pakistan.
15. In terms of his current medication, [A] has annexed to his statement a photograph of the Appellant’s tablets. Those are Fluoxetine 20mg tablets (an anti-depressant), Propranolol 40mg tablets (used to treat heart problems and help with anxiety), Codeine Phosphate 30mg tablets (an analgesic) and Omeprazole 20mg tablets (used to treat heartburn and indigestion)

[A]’s Evidence

16. [A] is the Appellant’s brother with whom the Appellant lives. He provided a statement before the First-tier Tribunal dated 11 December 2020 ([ABS/1-5]) and gave oral evidence before Judge Talbot. His evidence is recorded at [17] to [20] of Judge Talbot’s decision as follows:

“17. [A] is the Appellant’s brother. He gave oral evidence in English. He has been in the UK since 2007, having arrived as a student and he is now settled and has British nationality. Besides the Appellant, there are two other brothers here. One of them has been here for 8 months to sit exams for his medical training and will then apply to remain as a highly skilled migrant. The other one came 2 years ago and has limited leave to remain for 5 years. Their mother came here a year ago and has leave to remain as [A]’s dependant. [A] has recently gone to Holland to be with his sister who is applying for leave to come to the UK. The Appellant has lived with [A] since he came to the UK. Currently they live together with his two other brothers and their mother.

18. Since 2013, the Appellant's mental health has declined and he has suicidal thoughts. His mental health is adversely affected by the lockdown but mainly by the experiences he suffered in Pakistan. Sometimes he behaves aggressively. He's not the man he used to be. He relies on the family to cook for him and wash his clothes and he needs prompting to attend to his personal care and to take his medication. Up until 2013 the Appellant was studying and working in a restaurant as a chef. [A] thinks it would be good for his brother to be able to return to work but currently he does not have permission to do so. When the Appellant arrived, [A] advised him that if he claimed asylum, he would be unable to continue with his studies. That's why he didn't claim asylum till later. [A] confirmed that the Appellant had been imprisoned in the UK on a charge of harassment of a female.

19. Their father is retired and living off his savings from his fruit and vegetable business. He still lives in the family home in Mirpur. There is conflict between them and their father because he put pressure on his sons to marry his sisters' daughters. His father and mother are not separated or divorced but do not speak to each other that often.

20. If the Appellant were to return to Pakistan, [A] and his brother could only afford to give him short-term financial support. There are extended family members in Pakistan but they do not have close ties with them and have never obtained financial support from them. [A] fears that without his family around him and looking after him, the Appellant would commit suicide."

17. Judge Talbot considered [A]'s evidence in the context of the specific claim of risk on return with which I do not need to deal as I have upheld Judge Talbot's rejection of the credibility of that claim. Judge Talbot also considered [A]'s evidence in relation to whether family life exists between him and the Appellant. He accepted that it did for the reasons given at [49] of his decision which I have preserved. I do not therefore need to make any finding in that regard.
18. [A] made a further statement dated 2 November 2021 which he adopted in oral evidence before me. In it, he says that the Appellant's mental health has deteriorated further since December 2020 because of the pandemic. He also says that his own financial situation has deteriorated as a result of the pandemic as he was on a zero hours' contract with the security firm for which he worked. He said that for this reason he would be unable to support the Appellant financially were the Appellant to return to Pakistan. [A] accepted in oral evidence that he is now working again. He said though that he has his own commitments as he is planning to get married. When asked how he would propose to support the Appellant if he were to remain in the UK, he said that it would not cost any more if the Appellant were living with him.
19. [A] was asked about the support that the Appellant might have in Pakistan where his father still lives. [A] said that his father was old and is not in a position to cope with the Appellant. There is no evidence indicating that the Appellant's father is himself aged or infirm so that he

would be unable to cope. The evidence which [A] gave before Judge Talbot was that the Appellant's father was living from the proceeds of his fruit and vegetable business which infers that he is still well enough to be running a business. [A] said that their father did not care about his family and there has been conflict within the family. He accepts in his first statement that they do have uncles and aunts still in Pakistan. He says that the family in the UK "does not have good ties with them" and they are not close. The evidence in that regard is however deliberately vague and designed I find to avoid the suggestion that this part of the family could help out whether financially or otherwise.

20. I note that the evidence recorded by Judge Talbot was that the Appellant's mother and father are not separated or divorced and do speak to each other (albeit not that often). I also note the Appellant's second statement dealing with this relationship. Although he says that he has only spoken to his father four times in the eleven years that he has been in the UK, he also says that his father has a heart problem. He does not say how he knows that if he does not speak to his father. He also appears to know that his father lives in Mirpur. The Appellant also says that when he was first diagnosed with possible mental health problems, his parents contacted local religious scholars. He does not say that this was just his mother and indicates that his father is still concerned for his welfare. I find that the Appellant and [A] are downplaying the extent of their relationship with their father to avoid any suggestion that he and other extended family members could assist the Appellant on return.
21. [A] also said that he did not consider that the Appellant would be able to look after himself. I have recorded above the evidence given by [A] to Judge Talbot about what he and his mother do for the Appellant. That is repeated in [A]'s second statement. [A] says that he helps the Appellant with his personal care, cooks and washes for him and ensures that he takes his medication.
22. [A] was somewhat unclear about when the Appellant's mental health problems began. He said first that it was in 2014-2015. It was pointed out to him by Mr Melvin that in 2014 to 2016 the Appellant was living in Ireland (although [A] could not remember the exact dates). [A] was asked how the Appellant supported himself in Ireland if he was unwell by that stage. [A] said that he was supporting the Appellant. He claimed that the Appellant was not working because he had no permission to work. I have no evidence from the Appellant about this. The only information about his status in Ireland is that he claimed asylum there (see [11] of Judge Talbot's decision). Mr Melvin also said that the Appellant was encountered working at the Lahore Grill in London in 2016. [A] said first that he did not know when the Appellant last worked and then said that it was in 2013. That is consistent with what [A] said in his evidence to Judge Talbot. On the other hand, as I have already pointed out, the Appellant in his second statement says that his mental health problems first occurred when he was working and that he then saw his

GP about those problems (§ [73]). According to the Appellant's medical notes, he did not see his GP about his mental health problems until 2017.

23. Although I also cannot find any evidence that the Appellant applied for permission to work in 2019, Ms Harper asked [A] a question about why the Appellant had done this and I therefore infer that it is accepted that he did. [A] said in reply that the GP had encouraged the Appellant to change his way of life and to go out. [A] therefore thought it would be helpful for the Appellant to work but he did not have permission to do so. I do not have medical notes for that period so cannot confirm that from other evidence. I also find it odd that [A] would consider the Appellant able to work if he was really as ill as [A] claims. Although [A]'s first statement dates from December 2020, his oral evidence was that even when the Appellant was in Ireland in 2014-2016, he was not well enough to support himself. I consider that [A] may be exaggerating the extent of the Appellant's inability to look after himself.
24. In terms of the treatment which the Appellant has received in the UK, that is mainly prescribed medication and consultations with his GP. Although the Appellant says in his second statement that he was awaiting an appointment with a consultant (apparently within his GP's practice) in March 2020, there is no evidence that he has seen a consultant in the eighteen months since then. The pandemic undoubtedly explains some of that delay but by no means all and the delay is also an indication that the Appellant's GP is not overly concerned by the Appellant's condition. That the Appellant's GP diagnosed mental health problems in 2017 but that over four years later the Appellant has still not been referred to a consultant for any therapy is also an indication that his problems are not viewed as life threatening or sufficiently serious for him to be a priority case.
25. That position is supported by the letter dated 29 May 2018 which is at [RB/G1-2]. I appreciate that this is somewhat dated. It pre-dates the medical reports obtained for this appeal with which I deal with below. However, at this stage, the Early Intervention Service did not consider the Appellant to meet their criteria. Much of the letter is concerned with the Appellant's reporting of his symptoms which is said to be "vague" and "unclear". He was denying suicidal thoughts.
26. Although I do not place much weight on Mr Melvin's suggestion that the Appellant's symptoms are entirely fabricated given what is said by the two medical experts (see below), I do consider that there is a degree of exaggeration. There is an absence of evidence from the Appellant's GP who is apparently the main (if not the only) source of the Appellant's medical support. The Appellant is represented by experienced immigration practitioners who could be expected to provide that evidence if it would have assisted. The Appellant's updated medical notes have not been produced.

Expert Evidence

27. The expert medical evidence comes from Dr Sue Moser, MB, ChB, FFSRH and Dr Marie Broyde, MBChB, BMedSci, DTMH, MRCP, MRCEM. Their report are dated respectively 10 June 2020 ([AB/26-50]) and 27 November 2020 ([ABS/6-41]). Both reports were commissioned via Freedom from Torture. Both met the Appellant face to face but Dr Moser was unable to complete a second assessment except by telephone due to the Covid-19 pandemic. Neither has provided any updating evidence for the purposes of the hearing before me and I can therefore proceed in relation to their reports largely based on what was said by Judge Talbot in the part of his decision which I preserved.

28. Judge Talbot accepted the expertise of both experts. Dr Moser's findings are summarised by the Judge at [23] of his decision as follows:

"... She diagnoses the Appellant as suffering from PTSD, pointing to the evidence of nightmares, avoidance symptoms and persistent perception of a heightened threat. She also identifies additional symptoms suggestive of 'complex PTSD; including irritability, difficulty sustaining relationships and avoiding going out. Dr Moser also makes a diagnosis of 'moderate depression', pointing to symptoms of depressed mood, lack of self-care, difficulty concentrating, recurrent thoughts of death or suicide, poor sleep and appetite, and tiredness/fatigue. She also finds co-existing symptoms of anxiety and panic attacks and psychotic symptoms (hearing voices, seeing his girlfriend outside his home and attacks when affected by the Jinn). Dr Moser refers to the assessments carried out by the Appellant's local mental health services and resulting diagnoses of depression and anxiety with medication being prescribed to address these symptoms. Dr Moser has written to his GP, asking for further assessment to be carried out to ensure the correct treatment....Dr Moser also refers to the Appellant's suicidal thoughts and considers the issue of suicide risk. She concludes that the current risk is low because of the support he gets from his GP and his family. However, if these protective factors were not present and if he were returned to Pakistan, she considers that the risk of suicide would increase...Dr Moser finds no evidence of fabrication in relation to the Appellant's reported psychological symptoms..."

29. Judge Talbot sets out the relevant parts of Dr Broyde's report at [25] of his decision as follows:

"The key parts of her report and findings can be summarised as follows ... Dr Broyde made her own assessment of the psychological symptoms, whilst also referring to the findings of Dr Moser. She diagnosed the Appellant as suffering from 'complex PTSD' and 'severe depressive disorder with psychotic symptoms'. With regard to the risk of suicide, she reported that the Appellant denied current thoughts of self-harm or suicidal intent, but she considered that the risk of suicide should be re-assessed if circumstances changed...Dr Broyde agreed with Dr Moser that there were no indications of embellishment or exaggeration in the Appellant's account of his symptoms and she also agreed that he would find it difficult to cope with the appeal hearing."

30. The Appellant also instructed a country expert, Dr Antonio Giustozzi. His report dated 25 September 2020 is at [AB/51-73]. Judge Talbot set out his evidence at [26] of his decision. The main purpose of Dr Giustozzi's report was to support the plausibility of the Appellant's claim to be at risk as a result of his relationship with [G] and I do not therefore need to set out the recitation of that part of his evidence. However, as Judge Talbot noted at [26] of his decision, Dr Giustozzi also dealt with mental health provision in Pakistan. Judge Talbot said the following about that evidence:

“Dr Giustozzi also addressed the issue of mental health provision in Pakistan. This is highly inadequate. Although 10-16% of the population are estimated to suffer mental health problems, there were reported to be only 400-500 psychiatrists operating in the country in 2018. Apart from a small percentage of the population who were entitled to free treatment, the cost of antipsychotic medication was some \$2 per day and \$5 per day for antidepressant medication. Dr Giustozzi also referred to the social stigma attached to mental illness in Pakistan. The suicide rate in Pakistan is below the world average ‘for cultural reasons’ but the actual rate may be under-reported.”

31. Judge Talbot made findings about what that evidence showed in relation to the Appellant's specific claim at [40] of the decision. That is not now relevant because that aspect has been disbelieved and there was no challenge made out to those findings. I have set aside [43] to [45] of Judge Talbot's decision which related to the Appellant's general mental health condition. It is therefore for me to make findings about that evidence.
32. As Judge Talbot, I accept the expert credentials of the three experts. I accept the evidence of the two doctors about the extent and nature of the Appellant's mental health whilst not accepting those parts of the reports which attribute his symptoms to his claim based on his relationship with [G]. I accept therefore that the Appellant “has symptoms which meet the diagnostic criteria for PTSD” as set out at [69] of the report of Dr Moser and has “additional symptoms suggestive of complex PTSD” ([70] of that report). The Appellant “has symptoms which meet the diagnostic criteria for moderate depression” as set out at [72] of the report of Dr Moser and that he “demonstrates co-existing symptoms of anxiety” ([73]). The Appellant also described psychotic symptoms. Dr Moser offers four possible causes for the Appellant's psychotic symptoms at [75] of her report. I can discount the third which relates to the Appellant's claim which has been disbelieved. However, she offers three other possible causes which are unrelated to that claim and therefore support his reporting.
33. Dr Moser also considers the possible causes for the Appellant's psychological symptoms at [77] of her report. Again, I can discount two of those as they are based on the Appellant's claim which was disbelieved. The other two are insecurity about his immigration status and fear of return to Pakistan and being separated from his family in the

UK (albeit discounting that the Appellant has a genuine fear of any specific danger). Dr Moser has discounted any fabrication of symptoms.

34. In order to assess the effects of removal later in this decision, I need to have regard to the treatment which the Appellant has received in the UK. Dr Moser refers to that at [76] of the report and following. He has been assessed by local mental health services “over the past few years” and was hoping to access counselling when the pandemic struck in March 2020. Dr Moser notes that the Appellant is prescribed medication by his GP and is in regular contact with his GP but had not at that time (nor since) had any psychiatric assessment. As Dr Moser notes at [80] of her report “[the Appellant] has not always accessed the psychological help he needs, expressing a fear that the mental health clinicians dismiss his belief in the Jinn”. Dr Moser did not find that unusual for someone with the Appellant’s symptoms. The Appellant has “sometimes been able to access medical care” here. Dr Moser expresses concern that ability to access care would be “very limited” if returned to Pakistan and that this in turn “could have potentially detrimental effects on his mental health and an increased risk of self-harm and suicide”. To some extent Dr Moser’s conclusions about self-harm and suicide risk have to be tempered by her acceptance of the Appellant’s account about what happened to him in Pakistan. She does however express concerns that the risk (at that time low) would increase if he lost the support of his family.
35. I do not need to make detailed reference to the report of Dr Broyde since the main purpose of her report was to deal with scarring. She concurs with the diagnoses made by Dr Moser. In terms of the impact of removal, Dr Broyde records at [83] of her report that “[the Appellant] does not think he would cope if he returned to Pakistan, and the threat of return is likely to be contributing to the worsening of his psychological symptoms”. She records that the Appellant “currently feels safe” with the support of his family. He denied current thoughts of self-harm and suicide. She opines that “this should be reassessed if his circumstances or living situation were to change”.
36. I accept that the reports of Dr Moser and Dr Broyde show that the Appellant is suffering from mental health problems. As I have found when looking at the Appellant’s and [A]’s evidence, however, those are currently managed by regular communication with his GP and medication only.
37. If one removes from the equation the Appellant’s claim about specific risk to him on return, one is left with possible causes for his problems being his uncertain immigration status and the fear and anxiety caused by the prospect of removal and separation from his family in the UK. The Appellant also refers to a “belief in the Jinn” which suggests that he has a mental health disorder unconnected to his immigration position and family circumstances.

38. I am unpersuaded that the medical evidence shows that the Appellant is at real risk of self-harm or suicide. Both Dr Moser and Dr Broyde accept that the risk at the time that they assessed the Appellant was low. Whilst both say that he should be reassessed if his situation changed and I accept of course that separation from a supportive family would impact on the Appellant's mental health, the doctors refer only to the potential for a risk to arise. As I have concluded when considering the Appellant's and [A]'s evidence, there is no evidence of any attempts at suicide or self-harm in the past notwithstanding the uncertainty of the Appellant's status and risk of removal hanging over him.
39. I turn then to the report of Dr Giustozzi. Again, I accept his credentials and expertise. I need not refer to the large parts of his report dealing with the Appellant's claim to a specific risk based on his relationship with [G]. Dr Giustozzi deals with the availability of mental health care at [27] onwards of his report.
40. Some of Dr Giustozzi's sources are dated (for example, the reference to WHO information from 2009). Whilst that might well be the latest WHO information, it does not necessarily reflect the position now. Dr Giustozzi does however refer to evidence from 2018 which is as summarised by Judge Talbot and indicates that there are few fully or properly qualified psychiatrists and that mental health services are under-funded by Government. Dr Giustozzi notes at [31] of his report that "[the Appellant] would be expected to seek mental health care and attend his sessions or take any medication, without constant support by the public health system" because the authorities cannot afford to provide social care to those who struggle to look after themselves. Again, though, this has to be read in the context of the treatment and care which the Appellant has in the UK. He has not been receiving counselling or care from a psychiatrist. He relies on medication and regular contact only with a GP.
41. Turning then to the cost of medication, Dr Giustozzi notes that this has to be paid for. He says that "a box of psychotropics...costs a couple of pounds". The quality is also questionable.
42. Ms Harper drew my attention in support of the first issue in particular to [32] to [33] of the report of Dr Giustozzi at [AB/68] which I therefore set out:
- "32. In addition, there is stigma attached to mental illness in Pakistan, lack of awareness about the causes and cures of mental illness and lasting belief in 'traditional' remedies such as exorcising evil spirits with the help of saints, experimenting with herbal cures and reciting verses from the Quran. Individuals believed to be possessed by spirits may be chained to walls, sometimes for years.
33. This results in social marginalization and discouraging individuals from seeking help.

One deeply rooted barrier to mental health is the cultural belief system in our country, due to which mental illness is often associated with supernatural forces, and thus tagging them as witchcraft, possession and black magic. In Pakistan, about 53% patients attributed their disease to control by evil spirits. In addition to this, families often hide the mental illness to prevent the sufferer from being an object of discussion in the society. [...] There is discrimination of psychosis in our society by tagging these individuals as fearful and violent. Secondly, we feel that through interacting with them, their evil spirit or possessions can harm us too. Thirdly, many people feel that the right place for them is in shrines, where they are physically harmed to get rid of these possessions.

Because ‘many people would not even be willing to socialise with someone who suffers from psychiatric illness in Pakistan’, individuals suffering from serious mental health issues are unable to have a normal social life, get married and often even find employment.”

43. I will deal with that evidence in the context of all the evidence relating to the first issue when I come to that below. For the moment, I note only that the evidence relating to “chaining” for a long period comes from an article in 2015 concerning the fate of two women and although there is reference to a “Medical Brief” from 2019 said to refer to shrines where chained and padlocked mentally ill people are taken neither that nor any of the other source material is included in order to consider the context. I have however managed to find the two articles relied on which are in the public domain.
44. The first article concerns two women in Pakistan who were chained inside the home by their relative because he could not afford to pay for medical help for their mental illness. Although there is a suggestion that this is not an isolated incident (or was not in 2015) in “impoverished” parts of Pakistan, it is notable that when the Government became aware of the situation, it sent in assistance. If there had been other articles of similar situations I would have expected Dr Giustozzi to refer to them and/or the Appellant’s solicitors to produce them as part of the background evidence.
45. The Medical Brief article is a report from the Daily Telegraph suggesting that “[t]he age-old practice of chaining the mentally ill to trees, to release them as ‘cured’ after 40 days, persist in much of Afghanistan and Pakistan”. However, the body of the report relates only to evidence from Afghanistan. There is no evidence about the level of such incidents currently in Pakistan. The reliance on faith healers or religious healers to cure mental health problems as mentioned in the article is consistent with the Appellant’s own case since his parent’s reaction when he told them of his mental health issues was to contact local religious scholars. That is not to say however that this leads to the chaining described in this article.

Background Evidence

46. I turn then to the other background material supplied by the Appellant. The Appellant's material as it relates to mental health services is at [AB/275-333]. I can discount the information from Ireland ([AB/275-278]) as that was compiled over nine years ago (August 2012). Similarly, the 2015 article at [AB/279] is somewhat dated (although this may have been included as support for some of Dr Giustozzi's report only). The article at [AB/288-302] whilst dated 2015 covers a study from 2000-2015 and is of limited use. I accept that the article from 2018 at [AB/280-287] supports the Appellant's claim about the poor development of mental health services in Pakistan. Some of what is there said is already reflected in Dr Giustozzi's analysis and therefore does not add to his report. The specific study reported in the article was conducted in 2013 and is therefore of limited use.
47. At [AB/303-333], the Appellant has included the Home Office's Country Policy and Information Note for Pakistan entitled "Medical and healthcare issues" dated August 2018 ("the CPIN"). Mental health is dealt with at [13] of the CPIN. That records that in 2014, according to WHO, there were "5 mental health hospitals in Pakistan with 344 residential care facilities, and in general hospitals, there were 654 psychiatric units". The number of mental health beds was "2.1 per 100,000 of the population". There is noted to be a lack of specialized institutions. Mental health patients are said to seek mental health cures at shrines as a result of the lack of qualified psychiatrists and lack of psychiatric hospitals. Most are also said to go to traditional faith healers and religious healers. As I have already said, that is consistent with the action taken by the Appellant's parents when he reported his mental health problems to them. There is reference to stigma about mental disorders and discrimination against patients so that families "prevent people from seeking mental health care". There is a lack of detail about what that stigma involves.

DISCUSSION AND CONCLUSIONS

Issue (1): Particular Social Group and Persecution

48. In relation to whether those with a mental illness can constitute a particular social group ("PSG"), the Appellant relies on the Tribunal's decision in DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00223 (IAC) ("DH (Afghanistan)"). The headnote so far as relevant reads as follows:

"1. The Geneva Convention relating to the Status of Refugees 1951 provides greater protection than the minimum standards imposed by a literal interpretation) of Article 10(1)(d) of the Qualification Directive (Particular Social Group). Article 10 (d) should be interpreted by replacing the word 'and' between Article 10(1)(d)(i) and (ii) with the word 'or', creating an alternative rather than cumulative test.

2. Depending on the facts, a 'person living with disability or mental ill health' may qualify as a member of a Particular Social Group ('PSG') either as (i) sharing an innate characteristic or a common background

that cannot be changed, or (ii) because they may be perceived as being different by the surrounding society and thus have a distinct identity in their country of origin.

...

4. The assessment of whether a person living with disability or mental illness constitutes a member of a PSG is fact specific to be decided at the date of decision or hearing. The key issue is how an individual is viewed in the eyes of a potential persecutor making it possible that those suffering no, or a lesser degree of, disability or illness may also qualify as a PSG."

49. The issue of what constitutes membership of a PSG in a mental health case is as set out at [2] of the headnote in DH (Afghanistan). That does not require further explanation. However, as the Tribunal pointed out at [40] of the decision, "[w]hether a person with mental health issues falls within a PSG is a complex question of fact and law" and that the burden of proving that the individual is a member of a PSG based on mental health problems lays with the appellant.
50. In this case, although I have found that the Appellant may well be exaggerating his mental illness, I have accepted that his problems are not fabricated, and I have largely accepted the evidence of the two medical experts regarding his diagnosis. However, the mere existence of mental health problems does not necessarily mean that the Appellant is a member of a PSG. The Tribunal in DH (Afghanistan) explained at [42] to [44] of its decision that "only in a small number of cases will [there be] lack of mental capacity or behavioural traits that may expose that person to a real risk of harm as a result of their illness in their home state". That is perhaps linked to an assessment whether there is persecution rather than whether there is Convention reason for the treatment suffered. As the Tribunal also said, though, there must be "sufficient cogent evidence to enable a clear finding to be made that such a person is suffering from serious mental illness". That is developed further in the following sentence where the Tribunal points out that "there are a number of mental health issues which can in themselves vary in degree, but which enable a person to function without any obvious external indicators or risk factors".
51. Whilst I have accepted that the Appellant has mental health problems, it is less clear that those problems can properly be described as "serious" particularly in the way in which that is defined by the Tribunal in DH (Afghanistan). As is said at [44] "'[s]erious mental illness' includes diagnoses which typically involve psychosis (losing touch with reality or experiencing delusions) or high levels of care, and which may require hospital treatment, the most common of which are schizophrenia and bipolar disorder (or manic depression)." The question is "fact sensitive" in every case and notably was not disputed in DH (Afghanistan).

52. Here the position is less clear. The Appellant believes himself possessed of a jinn. He says he hears voices. The Appellant's reporting was found by Dr Moser to be descriptive of psychosis and I have found that this reporting is supported to some extent by what Dr Moser says about possible causation. On the other hand, the Appellant has not received any "high levels of care". As I have remarked, he has been under the care of his GP since he first reported mental health problems in 2017 with little if any intervention from medics other than his GP (who is not a specialist in this field).
53. I am prepared for current purposes to assume that the Appellant is or could be a member of a PSG. However, if I did not accept that on the first head set out at [2] of the headnote in DH (Afghanistan), I would not have accepted it on the second which leads me to consider whether the treatment which the Appellant might face on return could properly be described as persecution.
54. I have taken account of what Dr Giustozzi says about the stigma attaching to mental illness in Pakistani society and that it may lead to marginalisation ([32] to [33] of his report at [AB/68]). I am quite prepared to accept that exists. Even in more developed societies, stigma relating to mental illness is not uncommon. As the Tribunal in DH (Afghanistan) commented at [88] of its decision, "persons living with a serious mental illness may be perceived as being different by the surrounding society and thus, have a distinct identity in their country of origin". That does not mean however that a person with mental illness is persecuted. As the Tribunal pointed out in the following paragraph of its decision, an appellant also needs to establish that members of the PSG of "persons living with a disability/mental health issues" "will be exposed to acts of persecution, including severe violations of human rights from which there is no effective protection."
55. In relation to the treatment which [DH] would face in Afghanistan, the Tribunal found based on expert evidence that, because of his behavioural traits, he would be "at high risk of physical violence from mob mentality" and there was evidence that persons such as [DH] were "pelted with stones in broad daylight". There was "a reasonable degree of likelihood of [him] being beaten up" or being flogged ([103] of the decision). That was in addition to the reference to being chained up or being locked in a cage on which Ms Harper relied. It is also worthy of note that, as recorded at [104] of the decision, the Respondent accepted that the ill treatment which [DH] would suffer would amount to persecution. There is no such acceptance in this case.
56. I have already referred to the limitations of the evidence on which the Appellant places reliance in this case. The high point of his case is that he would be chained up. However, the one article on which Dr Giustozzi places reliance which provides actual evidence of chaining in Pakistan as well as being historic relates to the experience of two women in the same household and also shows that when the Government was informed of

the situation, it took steps to intervene. That does not suggest that such situations are generally tolerated or accepted by the State. Although the other article relied upon does refer to an age old practice in this regard in both Afghanistan and Pakistan, the actual example given in that case relates only to Afghanistan.

57. The reference to chaining in DH (Afghanistan) was not the only treatment which was said to be likely to occur. The finding that the appellant was at real risk of persecutory treatment in DH (Afghanistan) was also based on a concession.
58. It is unhelpful to attempt to read across a factual finding from one case relating to a different appellant in a different country to the circumstances of another individual in another country. Even if a risk of chaining could amount to persecution taken alone, there is simply insufficient evidence to show that there is a real risk that this would happen to the Appellant in Pakistan. I do not need to decide whether the actions of the Pakistani State in the article to which I have referred show that there is a sufficiency of protection against such treatment as I do not accept that the evidence in this case demonstrates that there is a real risk of treatment amounting to persecution in relation to those with mental illness in Pakistan.
59. In conclusion, therefore, I find that even if the Appellant can bring himself within a particular social group of those with mental disabilities in Pakistan because of the societal stigma which there exists, he has not shown that he would for that reason suffer treatment amounting to persecution. His claim under the Refugee Convention therefore fails.

Issue (2): Humanitarian protection

60. I can deal with this issue quite shortly. As I understood Ms Harper to accept, if there is not a real risk of treatment amounting to persecution, the Appellant could not demonstrate that he would be at real risk of treatment meeting the threshold for humanitarian protection.
61. I would in any event have found against the Appellant on this issue. I refer to the Tribunal's decision in NM (Art 15(b): intention requirement) Iraq [2021] UKUT 00259 (IAC) ("NM (Iraq)"). The headnote in that case reads as follows:

"1. In order for an applicant, who relies upon medical grounds, to meet the requirements for humanitarian protection under Article 15(b) of the Qualification Directive ("QD") s/he must demonstrate that substantial grounds exist for believing there to be a real risk of serious harm by virtue of actors of harm (as defined by Article 6 QD) intentionally depriving that individual of appropriate health care in that country.

2. To establish the intentionality requirement the individual will have to show by evidence a sufficiently strong causal link between the conduct

of a relevant actor and the deprivation of health care. Reliance on a degradation of health care infrastructure/provision on the basis of the generalised economic and/or security consequences of an armed conflict in the country of origin will not, in general, suffice.

3. By contrast, Article 3 ECHR cases based on medical grounds do not require intentionality on the part of a third party.”

62. I appreciate that the Appellant in this case is not putting his claim under this head as a deprivation of medical treatment. He says that treatment would not be accessible or affordable but that is a matter to be considered under the third issue. Nonetheless, as the Tribunal in NM (Iraq) pointed out, by reference to other cases at [44] onwards of the decision, Article 15(b) requires ill-treatment to be inflicted. I refer in particular to the case of MP [2018] EUECJ C-353/16 as set out at [47] of the decision and [51] of the judgment in that case which reads as follows:

“51. In that respect, it should be recalled that the Court has held that the serious harm referred to in Article 15(b) of Directive 2004/83 cannot simply be the result of general shortcomings in the health system of the country of origin. The risk of deterioration in the health of a third country national who is suffering from a serious illness, as a result of there being no appropriate treatment in his country of origin, is not sufficient, unless that third country national is intentionally deprived of health care, to warrant that person being granted subsidiary protection (see, to that effect, judgment of 18 December 2014, M'Bodj, C - 542/13, EU:C:2014:2452, paragraphs 35 and 36)”.

As the Tribunal remarked at [48] of the decision in NM (Iraq), “the infliction of such harm must take the form of conduct by a third party (an ‘actor of persecution or serious harm’ as defined in Article 6 QD)”. That is absent in this case given my findings in relation to the first issue.

63. For those reasons, the Appellant is not entitled to humanitarian protection.

Issue (3): Article 3 ECHR

64. Although at the time of writing this decision, the Grand Chamber of the European Court of Human Rights has just issued its judgment in Savran v Denmark, that largely restates the principles set out in Paposhvili v Belgium [2017] Imm AR 867 (“Paposhvili”). The judgment in Paposhvili was itself the subject of guidance given by the Supreme Court in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 (“AM (Zimbabwe)”). As such, it is only necessary for me to refer to the judgment in AM (Zimbabwe) which is of course binding on me.

65. The test for establishing a breach of Article 3 ECHR occasioned by removal based on illness, be it physical or mental, is set out by reference to Paposhvili at [22] of the judgment in AM (Zimbabwe) as follows:

“183. The Court considers that the ‘other very exceptional cases’ within the meaning of the judgment in *N v The United Kingdom* (para 43) 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, of 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.”

[my emphasis]

66. Having clarified that test following the Court of Appeal’s judgment at [29] and [30] of the judgment, the Supreme Court went on at [32] of the judgment to set out how such a breach would need to be established as follows:

“32. The Grand Chamber’s pronouncements in the *Paposhvili* case about the procedural requirements of article 3, summarised in para 23 above, can on no view be regarded as mere clarification of what the court had previously said; and we may expect that, when it gives judgment in the *Savran* case, the Grand Chamber will shed light on the extent of the requirements. Yet observations on them may even now be made with reasonable confidence. The basic principle is that, if you allege a breach of your rights, it is for you to establish it. But ‘Convention proceedings do not in all cases lend themselves to a rigorous application of [that] principle ...’: *DH v Czech Republic* (2008) 47 EHRR 3, para 179. It is clear that, in application to claims under article 3 to resist return by reference to ill-health, the Grand Chamber has indeed modified that principle. The threshold, set out in para 23(a) above, is for the applicant to adduce evidence ‘capable of demonstrating that there are substantial grounds for believing’ that article 3 would be violated. It may make formidable intellectual demands on decision-makers who conclude that the evidence does not establish ‘substantial grounds’ to have to proceed to consider whether nevertheless it is ‘capable of demonstrating’ them. But, irrespective of the perhaps unnecessary complexity of the test, let no one imagine that it represents an undemanding threshold for an applicant to cross. For the requisite capacity of the evidence adduced by the applicant is to demonstrate ‘substantial’ grounds for believing that it is a ‘very exceptional’ case because of a ‘real’ risk of subjection to ‘inhuman’ treatment. All three parties accept that Sales LJ was correct, in para 16, to describe the threshold as an obligation on an applicant to raise a ‘prima facie case’ of potential infringement of article 3. This means a case which, if not challenged or countered, would establish the infringement: see para 112 of a useful analysis in the Determination of the President of the Upper Tribunal and two of its senior judges in *AXB v Secretary of State for the Home Department* [2019] UKUT 397 (IAC). Indeed, as the tribunal proceeded to explain in para 123, the arrangements in the UK are such that the decisions whether the applicant

has adduced evidence to the requisite standard and, if so, whether it has been successfully countered fall to be taken initially by the Secretary of State and, in the event of an appeal, again by the First-tier Tribunal.

33. In the event that the applicant presents evidence to the standard addressed above, the returning state can seek to challenge or counter it in the manner helpfully outlined in the judgment in the *Paposhvili* case at paras 187 to 191 and summarised at para 23(b) to (e) above. The premise behind the guidance, surely reasonable, is that, while it is for the applicant to adduce evidence about his or her medical condition, current treatment (including the likely suitability of any other treatment) and the effect on him or her of inability to access it, the returning state is better able to collect evidence about the availability and accessibility of suitable treatment in the receiving state. What will most surprise the first-time reader of the Grand Chamber's judgment is the reference in para 187 to the suggested obligation on the returning state to dispel 'any' doubts raised by the applicant's evidence. But, when the reader reaches para 191 and notes the reference, in precisely the same context, to 'serious doubts', he will realise that 'any' doubts in para 187 means any serious doubts. For proof, or in this case disproof, beyond *all* doubt is a concept rightly unknown to the Convention."

67. The issue for me to consider therefore when assessing whether the Appellant's return to Pakistan would breach Article 3 ECHR is whether the evidence demonstrates substantial grounds for believing that, due to the absence or inaccessibility of treatment in Pakistan, the Appellant would be "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".
68. I have set out the substance of the medical evidence and the views of Dr Giustozzi at [27] to [45] above. I do not propose to repeat what is there said. I have also made some comments about the nature and extent of the Appellant's mental health condition there and when dealing with the first and second issues at [48] to [63] above. Again, I do not intend to repeat my findings.
69. In short summary, although I have accepted the evidence that the Appellant genuinely suffers from a mental illness, I have also found that there is a degree of embellishment in the evidence and that the mental illness might not be such as could properly be described as serious. Even if it is, the evidence does not establish that the Appellant's health would suffer a decline reaching the high threshold set out in *Paposhvili* if he did not get treatment. The Appellant's treatment in the UK currently consists of medication and some regular contact with the primary care service. He is not receiving regular counselling. He has never been admitted to hospital as a result of his mental illness. I have rejected the suggestion that removal would lead to a suicide risk.
70. As the Courts have made clear, when considering the responsibility of the removing State in health cases, it is not the medical treatment which engages that responsibility. It is the act of removal. Nonetheless, as is

said in Paposhvili and repeated in AM (Zimbabwe), it is the act of removal coupled with the absence of or lack of accessibility to medical treatment in the receiving State leading to the extreme consequences for an appellant's health which is relevant. Here, other than medication, the Appellant receives very little by way of treatment in the UK. Whilst I have regard to what is said by Dr Giustozzi about treatment available in Pakistan and the limitations of that treatment, I do not consider that this has any impact in the Appellant's case because the evidence does not establish that the lack of or inaccessibility (or unaffordability) of that treatment would have the impacts which the Appellant would need to demonstrate in order to reach the necessary threshold to establish a breach of Article 3 ECHR.

71. I reiterate that the evidence needs to show not merely a risk of deterioration of mental health following removal but a risk of deterioration reaching the high threshold implicit in Article 3 ECHR and as explained in Paposhvili. Such evidence is absent in this case.
72. For that reason, I reject the Appellant's case on the third issue.

Issue (4): Article 8 ECHR

73. I move finally to Article 8 ECHR. I begin with the position under the Rules.
74. I remind myself that I have preserved the finding that the Appellant's relationship with his family in the UK, notably with his brother [A] amounts to family life due to the level of dependency which the Appellant has on his brother. That family life is not however a relationship which can be considered within Appendix FM to the Rules. The Appellant has no partner or child in the UK (or otherwise).
75. The focus within the Rules is therefore the Appellant's private life. He has not lived in the UK for a sufficient period to satisfy any of the sub-limbs of Paragraph 276ADE of the Rules. His case is put on the basis that he can meet Paragraph 276ADE(1)(vi) because there are very significant obstacles to his integration in Pakistan.
76. The test in relation to very significant obstacles to integration is summarised by the Court of Appeal in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 as follows:

"14. 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.”

77. The Appellant’s immigration history is set out at [10] and [11] of the decision of First-tier Tribunal Judge Talbot. The Appellant was born in February 1986 and is therefore now aged 35 years. He came to the UK in November 2009 then aged 23 years. He therefore spent his formative years in Pakistan. He left the UK for Ireland for a period in 2015. He claimed asylum there. Ireland sought to return him to the UK, but he returned voluntarily, claiming asylum here in March 2018.
78. The Appellant did not give oral evidence before me, but it is evident from his asylum interview record that he continues to speak the language of Pakistan. He was interviewed in Punjabi.
79. The Appellant lives in the UK with [A] and his mother. His mother in particular came to the UK in recent years, and I assume retains the culture of her native Pakistan. The Appellant is said not to socialise outside his family in the UK and will therefore be living in a household familiar with Pakistani culture. For those reasons, I find that he will have retained his linguistic and cultural ties to Pakistan.
80. The main factor relied upon in this appeal in this context is obviously the Appellant’s mental health. The Appellant relies on the medical evidence as showing that he would be unable to work, would have nowhere to live or any means of support. The Appellant still has his father in Pakistan and, although it is said that his father does not care about his family and the Appellant has had minimal telephone contact with him, I am not prepared to accept without evidence that the Appellant’s father would not provide him with some support.
81. Nonetheless, I do accept that the Appellant’s mental health problems have made it difficult for him to integrate in the UK. He has not formed relationships or friendships here and, as I have said, keeps himself within the family unit. His mental health problems are I find such as to provide an obstacle to his participation in society in Pakistan as they are in the UK.
82. Although I have found at [59] above that the stigma and discrimination experienced by the mentally ill in Pakistan is not sufficient to amount to persecution, it is relevant to the obstacles which the Appellant would face in rebuilding his life there.
83. Considering all the factors holistically, and notwithstanding the Appellant’s continuing cultural links to Pakistan and presence of some family members there, I am satisfied, based on the problems generated by his mental health particularly in relation to participation in society and his inability to form relationships that there exist very significant

obstacles to his integration in Pakistan. The Appellant therefore satisfies Paragraph 276ADE(1)(vi).

84. Having reached that conclusion, strictly I do not need to go on to consider Article 8 ECHR outside the Rules. I have however done so for the sake of completeness. The task for me is to assess the level of interference with the Appellant's private and family life against the extent of the public interest inherent in his removal. The issue is whether the interference is justified by and proportionate to the public interest.
85. As was said by the Court of Appeal in GS (India) and others v Secretary of State for the Home Department [2015] EWCA Civ 40, in a health case, "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". In other words, Article 8 "is not simply a more easily accessed version" of Article 3 ECHR.
86. In this case, however, there are two reasons why I consider that the Appellant's mental health impacts on the Article 8 balancing exercise. First, as I have already found, it impacts on his ability to form relationships and friendships and therefore to participate in society. As I have also found, the Appellant may face some stigma and discrimination also impacting on his ability to participate in society in Pakistan. Removal to Pakistan would therefore have a greater impact on his private life as a result.
87. Linked to that, removal to Pakistan would remove the Appellant from his family unit. That family unit was found by Judge Talbot to be family life based on the level of dependency which the Appellant has on his brother. There would therefore also be interference with his family life. Although the Appellant has his father in Pakistan and although I have found that his father would provide the Appellant with some support if he returned, I recognise that he does not have the closeness of relationship with his father that he does with his immediate family in the UK.
88. I do not place much weight on the Appellant's length of residence in the UK. Although he has been here now for about twelve years (except for when he was in Ireland), has studied here for a short period and has apparently worked here for a short period, there is little evidence of any integration into society here.
89. Balanced against that interference, I am required by Section 117B to have regard to certain factors in relation to the public interest. Section 117B (1) provides that the maintenance of effective immigration control is in the public interest. In this case, that is relevant because much of the Appellant's stay in the UK has been unlawful and that which was not unlawful was precarious. Had I not found in his favour in relation to his ability to meet Paragraph 276ADE(1)(vi), he could not otherwise meet the Rules.

90. It was submitted on the Appellant's behalf that I was not bound to give little weight to the Appellant's family life because it is not a family life formed with a partner to which Section 117B (4) applies. I do not accept that submission. As Section 117A makes clear the factors in Sections 117B and 117C are not exhaustive. If a Tribunal is bound by statute to give little weight to a relationship with a partner where that was formed unlawfully, it is difficult to see why more weight should be given to any other type of family relationship (except with a child). The Appellant's family would be more aware than would a partner of his unlawful immigration status. Whilst the relationship is not formed in the UK (as the family relationship was formed in Pakistan) it has been continued in the UK at a time when the Appellant had no right to remain. That is however not an argument which I need to consider further in this appeal for the following reasons.
91. Little weight does not mean no weight and is in any event a flexible concept. What is meant is that less weight attaches to a private and/or a family life formed whilst a person is in the UK with no or limited leave because of that status. The weight to be given to that private or family life, or perhaps more accurately the interference with it, depends on the evidence as to the strength. More weight can be given if the evidence shows that the private and/or family life is particularly strong.
92. Here, I have accepted that the Appellant is heavily dependent on his family in the UK. [A]'s evidence is that he has to look after the Appellant almost as if he were a child. There may be an element of exaggeration in that evidence. As Mr Melvin pointed out, the Appellant was able to attend some medical appointments alone. Nonetheless, I accept that there would be a significant interference with the Appellant's family life if that support were withdrawn.
93. It is said on the Appellant's behalf that he speaks English. I have no evidence of that. The Appellant did not give oral evidence before me or before Judge Talbot. Judge Talbot notes at [5] of his decision that an interpreter was present in case the Appellant was to give evidence. Judge Talbot spoke to the Appellant briefly via that interpreter to explain the course of the proceedings. I attach some limited weight to the public interest in this regard.
94. As I indicated at the outset of this assessment, it is made only if I am wrong in my finding that Paragraph 276ADE(1)(vi) is met. If that were not met, the Appellant would not meet the Rules and weight would attach also to the public interest in maintaining effective immigration control.
95. Nevertheless, I would be satisfied based on the significant level of interference with the Appellant's private and family life for the reasons set out above, that the public interest is in this case outweighed by that interference. I find therefore that removal would also be a disproportionate interference with the Appellant's private and family life

and therefore the Respondent's refusal of the Article 8 claim breaches section 6 Human Rights Act 1998.

CONCLUSION

96. For the foregoing reasons, I reject the Appellant's protection claim and claim to humanitarian protection based on his mental health. I also reject his claim based on Article 3 ECHR. However, I find that there are very significant obstacles to the Appellant's integration in Pakistan. He therefore meets Paragraph 276ADE(1)(vi) of the Rules. Outside the Rules, I also find that the decision to refuse his human rights claim within Article 8 ECHR breaches section 6 Human Rights Act 1998. I therefore allow the appeal on human rights grounds (Article 8).
97. The Appellant's appeal was dismissed on protection grounds by First-tier Tribunal Judge Talbot in relation to the Appellant's asylum claim and that conclusion was not challenged and was preserved by me.

DECISION

The Appellant's appeal is dismissed on protection grounds relating to his mental health (Refugee Convention and humanitarian protection).

The appeal in relation to the Appellant's asylum claim was dismissed by First-tier Tribunal Judge Talbot in his decision promulgated on 3 March 2021 and that finding was preserved.

The Appellant's appeal is dismissed on human rights grounds (Article 3 ECHR)

The Appellant's appeal is allowed on human rights grounds (Article 8 ECHR)

Signed: L K Smith
2021
Upper Tribunal Judge Smith

Dated: 16 December

APPENDIX: ERROR OF LAW DECISION



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/00677/2020 (V)

THE IMMIGRATION ACTS

**Heard at Field House, London
via Microsoft Teams
On Wednesday 18 August 2021**

**Determination promulgated
.....24 August 2021.....**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

**S S
[Anonymity direction made]**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z Harper, Counsel instructed by Sutovic & Hartigan
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was made by the First-tier Tribunal. As this appeal involves a protection claim, I consider it is appropriate to continue that order. 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, amongst others, to

both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Talbot promulgated on 3 March 2021 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 9 January 2020 refusing his protection claim.
2. The Appellant is a national of Pakistan. His protection claim is in part a claim to be at risk on return as a result of his relationship with [G]. It is said that the Appellant’s and [G]’s family did not approve of the relationship due to their different religions. The Appellant claims that they therefore eloped but [G]’s family tracked them down and took her away. The Appellant claims that he was detained as a result of the influence held by [G]’s family. Following his release, he claims that he was attacked and went into hiding before leaving Pakistan with a visa as a student. The Judge did not believe the Appellant’s claim. This part of the Decision has not been challenged.
3. The remainder of the Appellant’s case focusses on his mental health. The evidence shows that the Appellant is diagnosed as suffering from post-traumatic stress disorder (“PTSD”), depression and psychotic symptoms. The Judge accepted that evidence with some minor reservations which are not relevant to the challenge to the Decision now made. The Appellant also produced a report from Dr Antonio Giustozzi who is a recognised expert in relation to various countries including Pakistan. His evidence dealt with the availability of treatment for mental health problems in Pakistan as well as societal discrimination against those who are mentally ill.
4. The Appellant’s case in relation to his mental health is not only that removal to Pakistan would breach his human rights (Articles 3 and 8 ECHR) but also that, as a person in Pakistan with mental health problems and given the attitudes towards and treatment of such persons in that country, he is a member of a particular social group who would suffer discrimination amounting to persecution on return.
5. The Judge considered the Appellant’s case based on his human rights at [43] to [50] of the Decision but concluded that there would be no breach of Articles 3 or 8 ECHR. As I will come to, he did not consider the case relating to the Appellant’s mental health as put under the Refugee Convention.
6. The Appellant appeals on three grounds as follows:

Ground 1: The Judge failed to make findings on the risk of persecution or ill-treatment in Pakistan on account of the Appellant's mental health condition.

Ground 2: The Judge failed to make sustainable findings on the availability of medical care in Pakistan.

Ground 3: The Judge failed to consider material factors in the assessment of whether removal would breach Article 8 ECHR.

7. Permission to appeal was granted by First-tier Tribunal Judge Gumsley on 20 April 2021 for the following reasons:

“... 2. Having considered the Grounds as set out I am satisfied that it is arguable that, given the FtT Judge's acceptance of the medical evidence provided and the clinical opinions about the Appellant's mental state [40], he failed to make any or sufficient findings as to any risk of persecution or ill treatment arising from such matters as societal attitudes to those who suffer from mental illness. In addition, it is arguable that the FtT Judge failed to have any or sufficient regard to the Appellant's mental health issues when assessing family and private life within and outside the Rules.

3. In the circumstances the Appellant is granted permission to appeal and may argue all the matters pleaded.”

8. Although the Respondent filed a Rule 24 Reply on 6 May 2021 seeking to uphold the Decision, having heard Ms Harper's submissions, Ms Cunha conceded that there was an error established at least in relation to the first ground. Although she initially submitted that this error might not be material, she finally accepted that it could be and also that the error might impact at least on the second ground. I indicated at the hearing that I found an error of law to be established on all three grounds. I therefore concluded that it was appropriate to set aside part although not all the Decision. I set out below those parts which I have set aside and those preserved. I gave directions for a resumed hearing in this Tribunal which I set out at the end of this decision. I indicated that I would provide written reasons for my decision which I do below.
9. The hearing before me was conducted via Microsoft Teams and was attended also by the Appellant. There were some technical issues affecting Ms Harper's connection in particular but we managed to find a workaround to ensure that she was able to make her submissions so that they were heard and understood.
10. I had before me a core bundle of documents including the Respondent's bundle. I also had the Appellant's skeleton argument before the First-tier Tribunal (“the Skeleton Argument”), the Appellant's bundle before the First-tier Tribunal running to 333 pages (referred to hereafter as [AB/xx]) and a supplementary bundle which was also before the First-tier Tribunal running to 41 pages to which I refer as [ABS/xx].

DISCUSSION AND CONCLUSIONS

11. I take the Appellant's grounds in order, particularly since the concession made by the Respondent relates to the first of those grounds and I need to consider the impact of that on the other grounds.

Ground 1

12. The Judge accepted the clinical opinions set out in the two medical reports which are at [AB/26-50] and [ABS/6-41] (see [40] of the Decision). He considered the content of those reports at [43] and [44] of the Decision. He also considered the report of Dr Giustozzi at [45] of the Decision specifically with regard to what was said about the treatment available to those with mental health problems in Pakistan. The Judge said the following about that treatment:

"I note the country background materials and the report of Dr Giustozzi relating to mental health provision in Pakistan. It is clear from this that it is in many respects quite inadequate to deal with the mental health needs of the population and is certainly very inferior to the professional care and treatment that is provided by the NHS in the UK. However, antidepressant medication is available at least as a private patient and there must be some possibility that his family resident abroad would be able to provide some financial help if needed to acquire this. Given the high threshold in 'health cases' under Article 3 as set out in the well-established jurisprudence, I have to conclude that, on the evidence before me, he falls well below the threshold for international protection on grounds relating to his mental illness and suicide risk."

13. The way in which the Appellant's case is put based on his mental health is set out at [31] to [51] of the Skeleton Argument. At [31] to [40], the Appellant clearly puts forward a case that his mental health gives rise to a claim under the Refugee Convention on account of the ill-treatment and discrimination suffered by those with mental health problems in Pakistan who are said to constitute a particular social group. As I have already noted was accepted by Ms Cunha, the Judge makes no reference to that argument and fails to make any findings about it. Although the Respondent's Rule 24 Reply makes the point that the Judge does not have to mention every part of the evidence, he does have a duty to resolve all the issues. That he has failed to do in this case.
14. Ms Cunha did make submissions about materiality of the error. She pointed out that the case on which the Appellant seeks to rely in this regard (DH (Particular Social Group: Mental Health) Afghanistan [2020] UKUT 00233 (IAC) - "DH") may be distinguishable. She submitted that DH is an unusual case where it was found that the appellant's mental health which was an immutable characteristic would itself give rise to risk. That may well be so, but it does not absolve the Judge from having

to consider the issue (nor did I understand Ms Cunha to suggest that it did).

15. It is very difficult to see, absent any reasoning on this issue, how it can be said that the outcome of the appeal would or even might be no different. For that reason, I accept that the Respondent's concession is rightly made, and I conclude that the error may be material such that the appeal needs to be re-heard on this issue.

Ground 2

16. In light of the above conclusion, I can deal shortly with the second ground which also concerns the mental health issue. It is submitted by the Appellant that the Judge failed to make sustainable findings on the substance of the health case because he left out of account some of the evidence.
17. I was particularly persuaded by Ms Harper's submission that the Judge failed to take into account certain aspects of the expert evidence, in particular the stigma associated with mental illness in Pakistan, the quality of medication in that country and availability of social care. Those are aspects of the evidence of Dr Giustozzi ([AB/66-70]). They were not considered.
18. Ms Cunha pointed out that only one of the Appellant's brothers in the UK has settled status here and there may be the possibility that one of the others could return with the Appellant to Pakistan. At the very least, they could provide support in the short-term. That may well be relevant to the case under both Articles 3 and 8 ECHR. Nonetheless, the Judge failed to consider the evidence as I have set out above and it cannot be said that the potential availability of support from family members can overcome that failure entirely.
19. For that reason, I accept that the Judge's reasoning concerning Article 3 ECHR at [43] to [45] of the Decision requires to be revisited. I set aside those paragraphs.

Ground 3

20. The third ground concerns the Article 8 claim. The Judge dealt with that at [48] to [50] of the Decision. Having directed himself concerning the interaction of Article 8 and the Immigration Rules ("the Rules") at [46] and [47] of the Decision, the Judge considered the Appellant's private life at [48] of the Decision. He considered the case specifically with regard to paragraph 276ADE(1)(vi) of the Rules ("Paragraph 276ADE(1)(vi)"). Paragraph 276ADE(1)(vi) is concerned with the obstacles to integration in Pakistan. As Ms Harper rightly pointed out, there is no consideration by the Judge whether and to what extent the Appellant's mental health may impact on his ability to integrate (taking into account also the evidence

about societal stigmas and discrimination). I accept that the criticism made of the Judge's analysis is well founded.

21. Ms Harper did not criticise [49] of the Decision which considers the Appellant's relationship with his brother [A] in the UK. The Judge concluded (favourably to the Appellant) that the Appellant enjoys family life with [A] due to his high dependency on his brother. I see no reason to interfere with that finding and I do not therefore need to set aside that paragraph.
22. Paragraph [50] of the Decision is the Judge's balancing assessment of Article 8 ECHR outside the Rules. The Appellant's criticism in this regard has some overlap with the criticisms made of the Judge's findings under Article 3 ECHR and Paragraph 276ADE(1)(vi) concerning the impact of the Appellant's mental health issues. I accept that the level of interference with the Appellant's Article 8 rights has to be properly evaluated against all the evidence about his mental health and the situation he will face on that account in Pakistan.
23. Ms Cunha accepted, based on the authority of GS (India) and others v Secretary of State for the Home Department [2015] EWCA Civ 40, that there is potential for an Article 8 case to be made on health grounds even if one fails under Article 3 ECHR if there is some additional factor falling within the Article 8 paradigm. The health case however has to be considered fully first under Article 3 ECHR. Given my acceptance that the Judge has erred in his Article 3 evaluation of the health case by not considering some of the evidence, it follows that this may impact on the Article 8 consideration. For that reason, it is also appropriate to set aside paragraphs [46] to [50] but, as noted above, not [49] of the Decision.

CONCLUSION

24. For the foregoing reasons I find errors of law in the Judge's assessment of the Appellant's health claim. There is no challenge to the Judge's assessment of the Appellant's protection claim as to risk on return arising from his relationship with [G] nor as to the Judge's recording of the evidence. I see no reason to set aside any part of the Decision up to and including [42] of the Decision. I set aside [43] and [45] of the Decision as a result of my conclusion that the Appellant's second ground discloses an error in the Judge's Article 3 consideration of the health claim. I set aside [46] to [50] of the Decision as a result of my conclusion based on the Appellant's third ground but I exclude from that [49] of the Decision which is not challenged.

DECISION

I am satisfied that the decision of First-tier Tribunal Judge Taylor promulgated on 3 March 2021 discloses an error of law. I set aside

that decision whilst preserving [1] to [42] (inclusive) and [49] of the Decision. I make the following directions for a resumed hearing:

DIRECTIONS

1. Within six weeks from the date when this decision is sent, the parties are to file with the Tribunal and serve on the other party any further evidence on which they seek to rely.
2. The appeal is to be relisted on the first available date after eight weeks for a hearing at Field House via Microsoft Teams with a time estimate of ½ day. The Appellant will not be giving evidence and there is therefore no need for an interpreter (it is for the Appellant to arrange his own interpreter in order to follow the proceedings).
3. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.

Signed: L K Smith
Upper Tribunal Judge Smith

Dated: 20 August 2021