



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002729

First-tier Tribunal No: PA/52409/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 August 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MA
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ell instructed by Buckingham Legal Associates.

For the Respondent: Mr Tan, a Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 27 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Thorne ('the Judge') promulgated following a hearing at Manchester IAC on 4 April 2022, in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. The Judge noted the appellant claimed to have arrived in the United Kingdom on 17 May 2000 and claimed asylum. That application was refused and his appeal

against the decision dismissed on 26 August 2003. Permission to appeal that decision was granted, the appeal was remitted, but dismissed by another judge on 2 September 2004.

3. In December 2007 the Judge records the appellant left the UK voluntarily and returned to Pakistan. He re-entered the UK on 29 March 2012 with a visit visa valid to 25 July 2012. The Judge notes on this occasion the appellant had provided a slightly different spelling for his first name and a different date of birth.
4. On 27 October 2014 the appellant applied for leave to remain on the basis of his family and private life which was refused on 9 January 2015. On 4 October 2015 he made a further application on the same basis which was refused on 25 January 2016 and an appeal against that decision dismissed by the First-tier Tribunal and permission to appeal to the Upper Tribunal refused. On 22 May 2018 the appellant made a further asylum claim which was made void as he had previously claimed asylum in 2000, but the application was treated as a further submissions application.
5. The Judge noted that the most recent application was refused on 30 April 2021. The application was based on a claim the appellant could not return to Pakistan due to a land dispute with his political opponents.
6. After setting out a detailed self-direction of the law, which is not strictly required, the Judge sets out findings of fact from [39] of the decision under challenge.
7. The Judge properly directed that the starting point was the earlier decisions in accordance with the Devaseelan principles. In those early decisions the appellant's evidence about the land dispute was found not to be credible, his account of being persecuted by his enemies because of a land dispute was not accepted, and it was found he could safely return to Pakistan with no breach of his human rights.
8. The Judge finds the new evidence from the appellant, that his brother had died since the last appeal, warranted little weight being attached to it as the appellant's evidence about the death was "vague, inconsistent and did not establish that the appellant is at risk of persecution in Pakistan". The Judge also gave limited evidential weight to the claimed death certificate dated 18 December 2019 particularly as it recorded the reasons for death as "unnatural" and the nature of death as "deadbody (sic) found".
9. The Judge also gave limited weight to the FIR and the Facebook evidence as a result of not being satisfied that the documents are genuine and reliable, particularly by reference to the ease by which false documents could be obtained in Pakistan, and because at their highest the documents only establish that the appellant's brother was killed by bandits who were intent on stealing from the farm, that the police promised to investigate, and the suspects were caught. It was not found this established any risk of persecution to the appellant.
10. The Judge considered the arrest warrants dated 1 December 2002, 31 March 2012 and 6 July 2012 but did not find those documents were genuine and reliable either. In addition to the adverse credibility points the Judge noted they merely stated the appellant should be arrested but gave no further details linking them to any of his claimed persecutors or associated circumstances and did not provide evidence to establish that the appellant would be at risk of persecution for the reasons claimed or for any other reason.
11. The Judge considered the report of the Consultant Psychiatrist and concluded it was not appropriate to apart from the original determinations that the appellant is not credible and can be returned.
12. Having rejected the appellant's protection claims on all grounds, and Article 3 on medical grounds, the Judge considered Article 8 ECHR, accepting that the appellant has a private life in the UK which engages Article 8 [63].

13. The Judge accepted that the issue is that of proportionality. The Judge sets out a number of matters taken into consideration at [74] but concludes when having weighed the competing interests that the decision is proportionate.
14. The appellant sought permission to appeal relying on the decision of *Secretary of State for the Home Department v BK (Afghanistan)* [2019] EWCA Civ 1358 which it is stated is authority for the proposition the Devaseelan principles are not *res judicata* and that the issue is that of fairness, and that every tribunal was required to conscientiously decide the case on the evidence before it and not restrict the appellant to evidence which predates the early decision.
15. I find no merit in the assertion Judge restricted himself to only considering the earlier evidence. The Judge was aware of and properly applied the Devaseelan principles. The earlier decisions were taken by the Judge as the starting point, nothing more. The Judge clearly considered the evidence provided by the appellant in support of his further submissions and gives ample reasons for why it was concluded he could not attach the weight to that evidence that the appellant would have preferred him to have attached to it.
16. The Judge clearly came to his own conclusions in relation to the appellant's lack of credibility which accorded with those of the earlier judges.
17. Suggesting the appellant faced the risk of persecution when the Judge finds he did not is no more than a disagreement with the Judge's findings.
18. There is no merit in submission the Judge applied too high an evidential threshold when considering the evidence concerning the death of the appellant's brother. The Judge considered this evidence by reference to Tanveer Ahmed and provides adequate reasons for why the weight that could be given to the documents was limited. It does not matter that the appellant had submitted three different sources of information which he claims corroborates his evidence. That was all considered by the Judge who found that weight could not be placed upon it for the reasons given. Three defective sources of information do not prove that what is claimed is right or correct.
19. In relation to the medical evidence, the grounds assert that the judge did not appear to dispute the fact the appellant suffers from a major depressive disorder and generalised anxiety disorder, as per the medical report, but does not accept the appellant is suicidal. It is argued the report of Dr Ahwe stated the appellant had contemplated suicide in the past as a means of escaping his trauma experience and given his unstable mental state at present, which is not being treated adequately, return to Pakistan may lead to further deterioration of his mental health and increased risk of suicide. The grounds argue the Judge's finding that there is inadequate evidence the appellant would not receive adequate medical treatment in Pakistan is not properly reasoned as it is claimed that if he was to return to his home country the appellant will be unlikely to engage with access mental health care, irrespective of whether it is potentially available to him, due to his psychological state of mind. The grounds argue the Judge failed to properly consider this aspect of the appeal which was relevant to the Article 3 medical aspects of the case.
20. The grounds also assert the Judge failed to take into account the appellant's mental health issues and his ability to present his asylum claim which may have led to a different conclusion. I find such claim to have no merit as the Judge was aware of the medical report and based a number of findings upon issues which were not impacted upon by the appellants medical presentation.
21. The report prepared by Dr Anthony Ahwe is dated 2 August 2020. In section 3 of that report Dr Ahwe sets out the sources of information he received which includes background information and an instruction letter from the appellant's solicitor, and the appellant's GP and NHS letters. There is also reference to a face-to-face interview on 18 July 2020 for which the appellant required interpreter.

22. Mr Ell was asked at the commencement of the appeal whether he accepted there is no reference in the report to the Doctor having been provided with copies of the previous decisions which found the appellant's claim to lack credibility. It was accepted that there was no such reference.
23. Mr Ell submitted the Judge failed to deal with the risk of suicidal content of the report, that the Judge should have considered that the required threshold was crossed, and that the Judge was wrong to find there was no evidence of suicide. Mr Ell accepted the Judge did not necessarily have to follow the content or recommendation of the report but if the Judge did not do so adequate reasons have to be given. It was submitted Article 8 is relevant to the appeal and that there was evidence regarding the impact of the appellant having to return to Pakistan.
24. Mr Ell also argued the issue was that if the appellant was returned it would trigger suicidal ideation and that his family would not be able to help him there. It was submitted there was also the issue of access to treatment and that the appellant would not access the same due to the deterioration in his mental health and that elements of concern in relation to engagement were not dealt with by the Judge. The Judge should have dealt with the points raised in the report and the documents case adequately but did not.
25. Mr Ell was asked about whether the Doctor had seen the earlier determination as the previous findings regarding the lack of credibility in the appellant's claim are relevant to the credibility of the information Dr Ahwe was not provided with by the appellant.
26. In the section of Dr Ahwe's report dealing with circumstances leading to his arrival in the UK Dr Ahwe sets out the account that was provided to him by the appellant or the appellant's representatives. It is recorded at [4.5] that the appellant returned to Pakistan in 2007 believing his circumstances would have improved with no reference to the fact that he had to return as his asylum claim had been dismissed as what he was claiming he feared on return to Pakistan had been found to lack credibility and to be a lie.
27. In relations the issue of suicide Dr Ahwe writes:
 - 6.2 MA experiences fleeting suicidal thoughts but denies any specific plans to act on his thoughts at present the sake of his family he cites as a protective factor. However he has had thoughts of jumping off five-storey buildings to end his life but was discouraged by friends. Although there has been no previous suicide attempts, he stated that he will commit suicide if he is returned to Pakistan as they fear they will be captured, tortured and may be killed by the same men who killed his brother. He fears that he will be arrested by the authorities on return to Pakistan due to the warrant of arrest issued against him in Pakistan.
28. The Judge considered the appellant's claim of what he alleges occurred to him in Pakistan but found that lacked credibility. The Judge gives ample reasons for why he could attach no weight upon the documents purportedly showing the appellant's brother had been killed, or upon the FIR. In light of that there is nothing left to support the appellant's claim of a credible subjective fear of harm if returned to Pakistan. All the reasons he gives for wanting to commit suicide or self-harm have been found to lack credibility.
29. Dr Ahwe at [5.2] records have been informed of a family history of mental health problems with the daughter of the appellant's paternal uncle suffering from depression and being admitted to a mental health unit and his paternal cousin suffering from depression and contemplating suicide in the past.
30. It may be the appellant has a major depressive order and comorbid generalised anxiety disorder as diagnosed by Dr Ahwe. The Judge does not find otherwise.

The causation of the same set out in the medical report is not supported by the evidence before the Judge on which weight could be placed.

31. At [7.9] Dr Ahwe records the appellant's anxieties about returning to Pakistan where he believes he may be killed and the uncertainty surrounding his immigration matters "all of which seem to have acted as predisposing, precipitating and perpetuating factors to his mental health difficulties at present". It has accepted that uncertainty surrounding the appellant's immigration status may impact upon his mental health, as it does for a number of asylum seekers and those seeking to remain in the UK, but his alleged subjective fear of being killed is not objectively well founded on the evidence.
32. At [7.5] Dr Ahwe records the appellant was started on antidepressant medication but that he had not noticed any significant improvement in his symptoms resulting it being recommended that the dose be increased.
33. Dr Ahwe was asked by the appellant's solicitors to comment on the impact of his mental health if he is return to Pakistan. He writes:

7.20 I am aware that it might be 'inhuman and degrading', according to the provisions of Article 3 (European Convention on Human Rights), to return an individual to circumstances in which their mental health would be in peril, although the threshold for demonstrating this is very high. I am also aware that consideration to the 'moral and physical integrity' of the individual as part of their right to a 'private and family life' (ECHR Article 8), within which the individual's mental health is crucial.

7.21 The impact of the sudden loss of his friends and other social support or treatment networks on an individual who has engaged in treatment in the UK should be taken into account if the individual faces deportation. Separating [MA] from his social and professional support in the UK is likely to have a negative impact on his mental state. Under these circumstances, [MA]'s mental state is likely to deteriorate significantly if he were to be forced to return to Pakistan.

7.22 In my opinion [MA]'s mental condition is likely to worsen and his ability to access mental health services in his home country may be compromised. It should be noted that 'availability' and 'ability to access' are not the same thing. Given [MA]'s current presentation, if he were to be returned to his home country, he is unlikely to engage or access mental healthcare, irrespective of whether it was potentially available to him, because of the current psychological state of his mind. [MA] reports experiencing mental health difficulties which have worsened particularly in the past year.

7.23 In assessing [MA]'s risk of self-harm or suicide in the event of returning to his Pakistan, it is important to point out that measures taken to prevent a suicidal act (such as restraint or medication) do not address the underlying suicide risk, cannot be kept up indefinitely and do not constitute psychiatric treatment. Clinical assessments of risk and their prevention in the context of deportation or removal are quite different from risk assessments in other contexts. [MA] has contemplated suicide in the past as a means of escaping his trauma experience and given his unstable mental state at present which is not being treated adequately, a return to Pakistan may lead to a further deterioration of his mental health and increase his risk of suicide.

7.24 It is frequently argued that a return to the country of origin is possible if the applicant were to relocate to an area (such as the country's capital) that would mitigate further risk of persecution or ill-treatment ('internal relocation'). The courts have held that decision makers must consider whether internal relocation is reasonable or unduly harsh in the particular circumstances of the individual. The extent to which safety can be assured for the particularly vulnerable in camps for internally displaced people was discussed in *Secretary of State for the Home Department v AH (Sudan) and others (FC)* [2007]. (See below regarding the reasonableness of 'internal relocation').'*Secretary of State for the Home Department v AH (Sudan) and others (FC)* [2007] UKHL 49, Baroness Hale citing UNHCR's intervention with approval: '... the correct approach when considering the reasonableness of [internal relocation alternative] is to assess all the circumstances

of the individual's case holistically and with specific reference to the individual's personal circumstances (including past persecution or fear thereof, psychological and health condition, family and social situation, and survival capacities). This assessment is to be made in the context of the conditions in the place of relocation (including basic human rights, security conditions, socio-economic conditions, accommodation, access to healthcare facilities), in order to determine the impact on that individual of settling in the proposed place of relocation and whether the individual could live a relatively normal life without undue hardship'.

- 7.25 In [MA]'s case the unpredictable event of an arrest, the indefinite period of stay and chronic threat of imminent return to his home country is likely to exacerbate feelings of helplessness in a state of intense fear. He is therefore likely to suffer further loss of hope or motivation, particularly in relation to hope of safety and future life goals associated with staying in the UK.
- 7.26 Given [MA] poor educational background, [MA] asserts that he does not have skills that he could utilise upon his return to Pakistan, including an ability to gain and retain employment due to his lack of qualifications. He stated that he will not be able to work in Pakistan if he internally relocates to another part of Pakistan as he fears he may be found by the men that killed his brother and the authorities due to the arrest warrant issued against him in Pakistan.
- 7.27 [MA] asserts that the police in Pakistan will not provide him with any adequate protection due to the widespread corruption, bribery and violation of human rights by police officers in Pakistan and as such he will not be able to approach the police for protection. [MA] stated that upon his return to Pakistan in the event that he is forced to leave the UK he would have no home to return to and asserts that he will be compelled to live in self-confinement due to the constant fear of persecution from the men who killed his brother and the authorities in Pakistan.
34. The role of an expert is to provide their opinion upon the particular topic for which they have the required qualifications and expertise. Dr Ahwe is a psychiatrist and should confine his reports to an assessment of the psychiatric condition of an individual. It is not clear why he thought it appropriate to stray into the legal arena by quoting case law. That is for the Tribunal.
35. The core finding of the Judges is that it was not made out that either the risk of suicide or the appellant's condition meets the high threshold required to engage Article 3 or 8 ECHR. When considering the other findings made by the Judge regarding the core of the claim, and its lack of credibility, and how they interrelate with the report, it is clear that Dr Ahwe's findings are predicated on the basis that what the appellant had claimed was true, when it is not.
36. The Judge also notes on return to Pakistan the appellant will have the support of his wife, children, and wider family, whereas he has no family in the UK.
37. In relation to the Article 3 medical tests, set out in [AM \(Zimbabwe\) \[2020\] UKSC 17](#), it is necessary to consider whether the evidence establishes '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' [Paposhvili v. Belgium \(Application No. 41738/10\) \(13 December 2016\)](#) [2017] Imm. A.R. 867.
38. The burden lies upon the appellant to establish that if he is removed there is a real risk of a breach of the Article 3 standard and threshold which applies and that if he provides evidence which is capable of proving his case to the relevant standard it is for the Secretary of State to prove evidence countering the appellant's evidence or dispelling doubts arising from that evidence before the appellant can be removed. See AXB (Art 3 health: obligations; suicide) Jamaica [2019] UKUT 397 (IAC).
39. The Judge's finding that the appellant had not established that the Article 3 threshold had been reached by establishing a real risk of a breach is determinative of the claim. It has not been shown there is not sufficient or

appropriate medical treatment available in Pakistan if needed. Indeed the reference to other family members receiving help for mental health issues in Pakistan clearly shows there is.

40. This is not a case in which the appellant has as a credible well-founded fear from the authorities which may dissuade him from approaching state organisations to receive medical help.
41. The appellant worked as an estate agent in the past helping individuals to buy land and it is therefore not clear why it was thought the appellant would not be able to seek employment on return from which he could provide for himself.
42. The appellant has approached the authorities in the UK and has a diagnosis of his mental health needs and treatment which could be made available to doctors in Pakistan.
43. I do not find it made out the Judge has erred in relation to the assessment of the medical or other aspects of the appeal. The reasons it was claimed the appellant may commit suicide have not been shown to be objectively well-founded on the evidence.
44. Whilst the appellant disagrees with the Judge's decision, and clearly wishes to be permitted to remain in the United Kingdom, the grounds fail to establish legal error material to the decision to dismiss the appeal on protection and human rights grounds sufficient to warrant the Upper Tribunal interfering any further in this matter.

Notice of Decision

45. No material legal error has been made out in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 August 2023