



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006222
First-tier Tribunal No:
HU/15842/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 November 2023

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

The Secretary of State for the Home Department

Appellant

and

SA
(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr M Diwnycz, Senior Home Office Presenting Officer
For the Respondent: Mr H Broach-Walla, Counsel instructed by Burton & Burton Solicitors

Heard at Field House on 7 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Respondent (also called “the claimant”) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Respondent, likely to lead members of the public to identify the Respondent. Failure to comply with this order could amount to a contempt of court. We make this order because the Respondent seeks international protection.

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of the First-tier Tribunal (First-tier Tribunal Judge Parkes) allowing the appeal of the respondent,

hereinafter “the claimant”, against the decision of the Secretary of State refusing him international protection.

2. The claimant is the subject of a deportation order. The immigration history shows that the claimant was born in Pakistan in 1993. He is now just over 30 years old. He came to the United Kingdom in 2011 when he was aged 17, entering the country with a valid multi-visit visa. It seems that the visa expired on 3 May 2013 but the claimant was then in the United Kingdom and remained there. On 6 December 2013 he appeared before the Crown Court sitting at Birmingham charged with two acts of wounding with intent. The victims were his mother and brother.
3. It is plain from the judge’s sentencing remarks that the claimant was a “very ill young man”. He was suffering from schizophrenia and he was detained for hospital treatment. The judge also made an order under Section 37 of the Mental Health Act 1938 and a restriction order under Section 41.
4. In May 2014, not very long after he was made the subject of a Hospital Order, the claimant applied for indefinite leave to remain in the United Kingdom. On 13 August 2014, the application was refused and he was served with notice of being an overstayer, which he clearly was.
5. According to the Secretary of State’s summary,
“On 23 September 2016, the application was placed on hold pending the [claimant’s] release from hospital following submission of further representations confirming that he had been detained in hospital and was unable to supply required evidence.”
6. There matters rested until 1 April 2019 when he was served with a decision to deport, followed, on 18 September 2019, with a decision to refuse his human rights claim and his application for indefinite leave to remain. He appealed and Judge Parkes’ decision, which was promulgated on 22 December 2022, just over a month after the hearing, is the decision of the appeal against the Secretary of State’s decision made in September 2019 and is the subject of the appeal before us.
7. It is instructive to look at the Secretary of State’s reasons for making the decision that she did.
8. The decision to deport dated 29 March 2019 and served on 3 April 2019 does not give detailed reasons. It says:
“In light of your actions, to include the behaviour you have displayed, and the court’s findings in your case, the Secretary of State deems your deportation to be conducive to the public good and as such you are liable to deportation under Section 3(5)(a) of the Immigration Act 1971.
The Secretary of State has deemed your deportation to be conducive to the public good and accordingly it is in the public interest that you be removed from the United Kingdom without delay.”
9. Representations were made leading to a decision to maintain the existing decisions that was explained in a letter dated 18 September 2019. The letter gave some more details about the conduct complained of. It is said that the claimant assaulted two victims a number of times by stabbing them with a knife causing numerous injuries. The claimant had become distressed at his home and then very violent towards his family. Initially he had used a brick to strike his mother and brother and then went on to use a knife (see page 892). The Secretary of State accepted that the appellant was schizophrenic. The condition was described as “treatment resistant schizophrenia”. He was prescribed

medication and appropriate drugs were found to be available in Pakistan as well as appropriate hospital care.

10. The Secretary of State's letter noted her Country Policy and Information Note on medical and healthcare issues dated August 2018 which said that:

"The majority of psychiatric patients go to traditional faith healers and religious healers who believe that mental illness is caused by supernatural forces, such as spirit possession or testing by God".
11. The same report recognised that there was stigma attached to mental disorders but psychiatrists and psychologists are available and medication can be bought. At that time the leading decision was **N (FC) v SSHD [2005] UKHL 31** and it set out a very high threshold in the case of a person seeking to resist removal on human rights grounds which the Secretary of State said was not crossed in this case. The Secretary of State also noted that the claimant had told his doctors that he had been part of an armed group in the Birmingham riots and he claimed to have killed two adults when he was 7 years old. We are not aware of any evidence supporting these claims and regard them as indicators of his disturbed mind.
12. The medical report described him as "a significant risk to others when he is unwell" and confirmed how in February 2017 he had been violent towards his carers. He had been found spitting out secretly his medication. It recorded also that he saw his close family members as imposters and that led to his attacking them.
13. The application was refused on Article 3 grounds and Article 8 was found to add nothing of significance. The claimant did not have family life with a partner or children. Private life was treated in a similarly brisk way. It was pointed out the claimant had arrived in the United Kingdom aged 17 years and had only lived in the United Kingdom for eight years. It was not accepted that he was socially or culturally integrated into the United Kingdom and this conclusion was justified by the short duration of the stay and his having been detained in hospital for the last six and a half years. He was also thought to be at continuing risk of wounding someone and so it was not accepted that removal would be a disproportionate interference with any private or family life rights.
14. We consider now how Judge Parkes dealt with the appeal.
15. His Decision and Reasons began by describing the appeal correctly as an appeal against a decision to refuse the claimant's application for leave to remain on human rights grounds and recognises that the decision to deport the claimant was made on the basis that his presence in the United Kingdom is not conducive to the public good. Paragraph 396 of the Immigration Rules prescribes that in the case of a person liable to deportation it assumed that the public interest requires deportation and that special provisions are made in the Rules for people sentenced to between twelve months and four years' imprisonment that codify and, to an extent, limit the circumstances in which an appeal can succeed.
16. The judge noted that the claimant did not attend the hearing. Given his vulnerability and mental health there would have been little point.
17. The judge reminded himself that the claimant was the subject of a Hospital Order under Section 37 of the Mental Health Act 1983. He was *not* convicted of a criminal offence and the automatic deportation provisions did not apply. He was not a "foreign criminal" within the meaning of part 5A of the 2002 Act as he was not convicted of a criminal offence.

18. The judge then outlined the medical history from the reports of Dr Farhaan Wali and Dr Mohammed Iqbal. He showed that the claimant was resistant to conventional treatment and was instead placed on Clozapine, which carries with it a risk of potentially fatal complications and the risk of relapse increases with stress and instability. He was able to live with his family in the United Kingdom. This seems to be the same family who were the direct victims of his violent conduct.
19. The judge acknowledged that it was said that the claimant was a member of a particular social group, whereas, most importantly, it was the claimant's case that he would not be able to access appropriate treatment and this could have dire consequences for him.
20. The judge noted it was the evidence of the claimant's parents that he had no real contact with his family in Pakistan.
21. The judge found that the reality was that in the event of the claimant's return to Pakistan he had would have to do so in the company of his family members from the United Kingdom, who for all practical purposes would have to remain there to facilitate his return. There would be treatment available in Pakistan but it would be expensive from private hospitals and not easy to arrange. The judge reminded himself of the **Zambrano** cases and said:

"It is difficult to see how the [claimant's] deportation can be affected with regard to his reliance on family members and the practical need for one to accompany him to Pakistan."
22. The judge noted that it was the Secretary of State's case that there is a risk of relapse that would put the public at risk in the United Kingdom and further that it would be necessary to show the serious risk of irreversible decline on return to Pakistan as required by the decision in **AM (Zimbabwe) v SSHD** [2020] UKSC 17.
23. The judge was satisfied that the claimant was a member of a particular social group for the purposes of the Refugee Convention. The hostile attitudes prevalent in society towards those with mental health conditions such as his were significant. The judge also found there would be a "very real prospect" that the claimant would not access the required healthcare. In that event his condition would meet the Article 3 threshold. The risk can only be mitigated by close support and requiring his family members to return with him would be a disproportionate interference with their rights. The judge allowed the appeal.
24. Before us the Presenting Officer relied closely on the grounds of appeal so it is appropriate to consider them very carefully.
25. These acknowledge that in the supplementary decision letter dated 31st January 2022 it was accepted that the claimant had been diagnosed with paranoid schizophrenia and such a person may be a member of a particular social group, but it was the Secretary of State's case that as the claimant remained mentally stable and medication was available in Pakistan he would not be at risk on return.
26. Nevertheless, the judge was criticised for allowing the appeal on asylum grounds (not expressly) when the only reason was "his diagnosis" and "hostile attitudes to those with mental health" so there was no engagement with the Secretary of State's contention that there was adequate treatment available.
27. There was also said to be no analysis of the actual test in **AM (Zimbabwe)** or a high threshold required by Article 3. It was then said that there was no evidence that sufficient care could not be provided. The decision was criticised for "a complete lack of analysis".

28. We reflected very carefully on this.
29. There is no doubt that the claimant has not lived in the United Kingdom for very long and certainly not lived in ordinary society for very long at all. It is also clear that by reason of his mental health, he has made no significant integration into wider British society. However, it is also clear that the judge decided that the claimant could not be returned to Pakistan without his family going with him. There was clear evidence there was no contact with family members there and we really do not understand why it should somehow be assumed that relatives who have had little contact with the claimant for some years would put themselves out to try and help him in the event of his return to Pakistan and especially not when that putting out would require considerable involvement in mental healthcare, which is only possible in the United Kingdom with the loving support of a family who are themselves assisted by the medical authorities.
30. The judge was unarguably entitled to conclude that the claimant could only be removed safely if family members from the United Kingdom, or some of them, went with him and that was just asking too much. The judge could have said more (we already have) but that would not have necessarily made things any better. It is quite clear that this claimant is a desperately ill man. His greatest danger has been to people who support him. It is the Secretary of State's case that the possibility of relapse makes him a danger to the population in the United Kingdom, but it also seems to be the Secretary of State's case that there was no risk of such of a relapse in the event of his return to Pakistan because some unidentified people from somewhere would put themselves out to support him. This approach just does not work. This is clearly a case where unless there was some proper basis for concluding, contrary to the claimant's clear case, that there will be a support mechanism awaiting him in Pakistan that there are real risks of persecution and his health declining so much that his return would contravene his Article 3 (and therefore Article 8) rights. If the judge did err by not giving a more detailed explanation, then we assume that is because he thought that the facts shout out to any fair reader. If it was a fault it was not material.
31. The claimant would be sent on his own to a country where mental illness is still a source of popular abuse and where there was no-one able to help him access such treatment as is available.
32. We just do not see an error of law in this decision. None is made out in the grounds. We dismiss the Secretary of State's appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 November 2023