



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-001172

First-tier Tribunal No:
HU/55915/2021;
LH/00681/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On

2nd of November 2023

Before

**UPPER TRIBUNAL JUDGE LESLEY SMITH
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

Between

**H J K
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nath, Counsel instructed by Lester Dominic, Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 17 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Manuell dated 23 February 2023 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 21 September 2021, refusing the Appellant’s human rights claim. The Appellant’s claim was made following the dismissal of her appeal on protection grounds by the decision of First-tier Tribunal Judge Cohen promulgated on 16 March 2017 (“the Previous Decision”).
2. Although no anonymity direction has been sought or previously made in this appeal, in light of the earlier protection claim and although that was unsuccessful, we have made an anonymity direction of our own volition. This appeal in any event raises issues surrounding the Appellant’s mental health and it is therefore also appropriate to protect her identity for that reason.
3. The Appellant is a national of Pakistan. She came to the UK as a student on 5 November 2011 and her leave was extended until 9 July 2012. However, further applications in that category were unsuccessful. She is therefore an overstayer. Her asylum claim was made in 2016 and dismissed by the Previous Decision. She made further representations on Article 3 and Article 8 ECHR grounds on 17 February 2021 which were refused by the decision under appeal. The Respondent however accepted that the representations amounted to a fresh claim as the Appellant was diagnosed with a mental health condition (psychosis) in 2018.
4. The Appellant claims that her mental health condition and the situation she would face on return to Pakistan breaches her Article 3 rights. Further and in the alternative, she claims that there would be a breach of her right to respect of her private life as she asserts that there would be very significant obstacles to her integration in Pakistan. She says that for that reason she meets paragraph 276ADE(1)(vi) of the Immigration Rules and/or that her appeal should succeed outside the Rules on Article 8 grounds. Judge Manuell dismissed the appeal on all grounds, finding that the Appellant cannot meet the Rules and that her removal would not be disproportionate.
5. The Appellant appeals the Decision on three grounds which can be broadly summarised as follows:

Ground one: The Judge failed adequately to consider material evidence as to societal treatment of mentally ill persons in Pakistan.

Ground two: The Judge failed properly to apply the “Devaseelan” guidelines.

Ground three: The Judge irrationally took into account the Appellant's lack of engagement with mental health care and support in the UK when determining the situation which she would face in Pakistan.

6. Permission to appeal was refused by First-tier Tribunal Judge Hamilton on 25 March 2023 in the following terms so far as relevant:

"..2. The first ground asserts the Judge erred by not giving sufficient weight to the adverse societal treatment the appellant would experience as a result of her mental health problems. However, the Judge's decision shows he gave careful consideration to the evidence. He was not required to mention every piece of evidence he took into account. This issue was subsumed by the wider issues surrounding mental health. The Judge found the appellant's mental health issues were managed by medication and that medication and support would be available to her in Pakistan. It is unarguable these finding was open to the Judge on the evidence [sic].

3. The second ground asserts the Judge failed properly to apply the Devaseelan guidelines but does not make sufficiently clear on what basis this is alleged. If what is being said is that the Judge did not treat the appellant's mental health issues as a material change in circumstances since the previous appeal, this is not arguable. The Judge identified the appellant's mental health issues as the key issue in the appeal.

4. The third ground is no more than a disagreement with the Judge's assessment of the evidence. It is unarguable that on the evidence, it was open to the Judge to find that medication would be available to the appellant in Pakistan and that if she relocated to an urban area, resources to assist her would also be available.

5. I do not find the grounds disclose any arguable errors of law. The application for permission is refused."

7. Following renewal of the application to this Tribunal, permission was granted by Upper Tribunal Judge Gleeson on the basis that the grounds of appeal are arguable. It was agreed at the hearing that this meant that all grounds were arguable.
8. The matter comes before us to decide whether the Decision contains an error of law. If we conclude that it does, we must then decide whether the Decision should be set aside in consequence. If the error would not affect the outcome, we would not set aside the Decision. If the Decision is set aside, we must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.
9. We had before us a core bundle of documents relating to the appeal, the Appellant's bundle and Respondent's bundle before the First-tier Tribunal ([RB/xx]), the Respondent's review and the Appellant's skeleton argument before the First-tier Tribunal. We also had a rule 24 response from the Respondent dated 25 August 2023 seeking to uphold the Decision for the reasons therein set out.

10. Having heard submissions from Mr Nath and from Mr Clarke, we indicated that we would reserve our decision and provide that in writing which we now turn to do.

DISCUSSION

11. We begin with the second ground as it raises a discrete issue overlapping with the previous protection claim. The remainder of the grounds focus only on the Appellant's current claim based on her mental health.
12. As we have already noted, the Appellant's earlier appeal was on protection grounds. The Appellant claim was based on her sexuality. Her claim was roundly disbelieved. The Judge did not accept that she was a lesbian as she claimed.
13. At the time of the previous appeal, the Appellant had not yet faced any mental health difficulties or, if she had, those did not form any part of her claim. The diagnosis of psychosis was not made until 2018, after the appeal was dismissed.
14. As we understand it, the Appellant accepts that the "Devaseelan" guidelines provide that the Previous Decision forms the starting point for the second Judge's consideration of the claim. At [12] of the Decision, when setting out the parties' submissions, the Appellant's Counsel is recorded as saying that "Devaseelan ...applied to the previous determination from 2017 but that was prior to the diagnosis of the Appellant's mental health problems in 2018". He goes on to say that "[t]he adverse credibility conclusions reached by the judge some 6 or 7 years ago needed to be revisited in the light of the medical evidence".
15. As we understood Mr Nath finally to accept, the only reference made by the Judge to Devaseelan when reaching his findings appears at [20] of the Decision as follows:

"It is plain that the Appellant has attempted various manoeuvres to remain in the United Kingdom, including a misconceived claim to statelessness which was withdrawn. Her asylum claim, raised years after her arrival with no adequate explanation, was another misconceived attempt to avoid removal. It is clear that Judge Cohen nevertheless examined her case based on her claimed sexual orientation with anxious scrutiny. His adverse credibility findings were not reached solely on the Appellant's testimony, but also on the inconsistent testimony of the Appellant's three live witnesses. There was no evidence placed before Judge Cohen to suggest that the Appellant had any mental health problems which might have required consideration when assessing her credibility. The tribunal finds that there is no reason for it not to treat Judge Cohen's decision as the starting point when considering the case the Appellant has now put forward. Judge Cohen found that the Appellant was not lesbian and had no well founded fear of her family members in Pakistan. Those findings stand."

16. Insofar as the Appellant submits that Judge Manuell should have considered the earlier credibility findings against the backdrop of the Appellant's mental health problems, there are two answers to that submission.
17. First, that is what Judge Manuell has done at [20] of the Decision. He considered the evidence which Judge Cohen took into account and whether the Appellant had been shown to suffer from mental health problems at that time. He also considered the nature of the other evidence before Judge Cohen.
18. Second, if and insofar as the Appellant now suggests that there was evidence before Judge Manuell that her earlier evidence might have been impacted by her mental health problems as later diagnosed, there is no reference in the grounds of appeal, nor did Mr Nath take us to any medical evidence supporting that submission. We have considered that medical evidence to determine whether it would support such a submission. It does not.
19. Dr Jasmine Murray, Chartered Psychologist, who provided a report dated 12 February 2021 ("the Psychologist's Report") (RB/25-36) was not asked to address this issue. The issue is not addressed either by Dr Peter Carter, Consultant Psychiatrist in his letter dated 10 August 2020 ([RB/37]) nor by Dr Kenneth Anderson of SMA Medical Centre in his letter dated 16 December 2020 ([RB/38]). Other medical evidence shows that the diagnosis of psychosis was not made until September 2018. The first reference to psychosis or mental health problems in the medical notes is May 2018 ([RB/49-50]) – over one year after the earlier appeal. There is therefore no evidential support for the submission that Judge Manuell was bound to consider the impact of the Appellant's mental health condition on the earlier adverse credibility findings.
20. The way in which this ground is pleaded says only that "[b]eyond stating that the medical situation was not brought to FTJ Cohen's attention at the previous hearing, FTJ Manuell has not questioned whether the Appellant is able to surpass the suspicion that *Devaseelan* calls for". Neither that submission nor the reference to the case of Secretary of State for the Home Department v BK (Afghanistan) [2019] EWCA Civ 1358 which follows refers to any further evidence which it is said that Judge Manuell has failed to consider. We observe that the Appellant's skeleton argument before Judge Manuell refers to the protection claim only at [8.7] where it is asserted that she is gay and that her family do not support her. That is cross-referenced only to the Appellant's own witness statement at [6] where those assertions are made. The Appellant was not called to give oral evidence.
21. Neither the Appellant's statement nor the skeleton argument suggests that there is any further evidence supporting the protection claim which was found not to be credible nor is there any attempt to engage with the previous adverse credibility findings of Judge Cohen or

to explain how the evidence given to Judge Cohen was affected by the Appellant's mental health. In those circumstances, Judge Manuell was clearly entitled to follow Judge Cohen's conclusion in relation to the protection claim. The second ground discloses no error of law.

22. The first and third grounds are concerned with the Appellant's mental health condition and the situation she would face in Pakistan as a result of her removal.
23. The first ground is concerned with what is said to be societal stigmatisation of those with mental health problems in Pakistan. The ground is pleaded as a lack of adequate reasons. Mr Nath submitted that the Judge had not considered this issue at all.
24. The Appellant did not rely on any country expert evidence in this regard. At [7] of her witness statement she says this:

"I fear that if I return to Pakistan I will be bullied and abused, as the level of understanding and education that individuals have in Pakistan on disabilities and mental health, is very different to those that individuals have in the UK. Moreover, mental health issues like those I experience are known to be taboo and stigmatized in Pakistan. My psychotic disorder causes me to be clinically anxious and depressed, which I fear those in Pakistan will not understand."
25. The only reference to this aspect of the Appellant's case in the Appellant's skeleton argument before Judge Manuell is at [8.9] where it is asserted without any cross-reference to evidence that "[m]ental health problems are neither well-received or understood in the Pakistani community".
26. The Appellant's pleaded ground of challenge to the Decision relies on the Respondent's "Country Policy and Information Note Pakistan: Medical and healthcare provisions" dated September 2020 ("the CPIN"). It is worthy of note that although Judge Manuell agreed that the CPIN was relevant and should be considered by the Tribunal, that was not contained in the bundles before the Tribunal ([8] of the Decision). When making oral submissions, as recorded at [12] and [13] of the Decision, the matters raised by the Appellant's Counsel and to which the CPIN might be relevant were that the Appellant would be unable to access support in Pakistan and that there were inadequate facilities to treat those with mental health problems there. There is nothing to indicate that Judge Manuell was taken to the paragraphs of the CPIN now relied upon.
27. The paragraphs of the CPIN relied upon in the pleaded grounds are [4.12.5-6]. Mr Nath referred us in addition to [4.12.7] but, having read it, that paragraph does not appear relevant to this ground. The paragraphs relied upon in the grounds read as follows:

“4.12.5 The 2020 report on mental healthcare in Pakistan noted that mental health problems were taboo and people were reluctant to reveal a mental illness. The report also stated:

‘In Pakistani culture, it is commonplace to approach spiritual or traditional healers in cases of physical or mental illnesses. Faith healing is the traditional way of treatment for mental ailments in this culture, as people usually perceive mental illness to be the result of supernatural influences. Use of faith healers is irrespective of socio-economic factors as it usually depends on the person’s belief toward spiritual healing. Faith healers are a major source of care for people with mental health problems in Pakistan, particularly for women and those with little education.’

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

28. As Mr Clarke submitted and we accept, the high point in relation to the way the Appellant suggests that her case ought to have been considered is that there may be some “adverse stereotyping” and that mental health is a “taboo” subject such that those affected often seek unorthodox medical treatment. The evidence falls very far short of suggesting any widespread societal discrimination or stigmatization.
29. As Mr Clarke also pointed out, there must be those with mental health problems who do seek out psychiatric or psychological treatment as otherwise such facilities would not exist. Relying on the CPIN, as the Judge points out at [24] of the Decision, “psychiatric resources exist”.
30. Even if the Judge should have referred to the paragraphs of the CPIN cited in the grounds, which we doubt given the absence of any direct reference to those paragraphs or the relevance of them, we do not accept that, if he had, it would have impacted on his conclusions. The evidence now relied on falls far short of making out the Appellant’s case that there exists some form of widespread societal discrimination or stigmatization which would impact on her on return. Ground two is not made out.
31. We turn finally to the third ground which concerns what is said by the Judge at [24] of the Decision. We set that paragraph out in full as the section complained of in the pleaded grounds needs to be set in context:

“The Appellant produced no evidence to show that Aripiprazole or an equivalent anti-psychotic drug was not available in Pakistan. The tribunal finds that the Appellant would be able to continue her medication in Pakistan. As Mr Gajjar submitted, Pakistan has limited resources for psychiatric care, relative to the size of the population. Nevertheless, psychiatric resources exist, CPIN 14.12.1:

‘[There are] 11 psychiatric hospitals in the country, 800 psychiatric units in general hospitals and 578 residential care facilities, all offering inpatient care. As per the WHO’s report, there are 3,729 outpatient mental health facilities in the country, of which 3 were for children and adolescents only.

There were 624 community-based (non-hospital) psychiatric outpatient facilities.'

Given the fact that the Appellant has not engaged with such help as has been available in the United Kingdom, the fact that resources in Pakistan are inferior makes little difference to her. It is plain that resources exist. The tribunal finds that it would not be unreasonable for the Appellant to relocate to one of Pakistan's urban areas in order to have more convenient access than from a village setting. There would also be greater freedom for her as a woman: see the discussion in the CPIN for Pakistan: Women fearing gender-based violence, November 2020."

[our emphasis]

32. We have highlighted the section of which complaint is made in the pleaded grounds. It is there said that this does not sit comfortably with the Judge's summary of the evidence at [17] of the Decision which reads as follows:

"Dr Peter Carter, Consultant Psychiatrist ("Dr Carter"), provided a report on the Appellant's behalf dated 10 August 2020. Dr Carter stated that the Appellant's illness often makes it hard for her to access treatment and this has led to intermittent contact with his service. The Appellant took medication by tablets and she had been intermittently adherent to that. The Appellant would benefit from continued ability to reside in the United Kingdom where she would be most likely to access treatment helpful to her. Dr Kenneth Anderson of the SMA Medical Centre provided a similar letter of support dated 10 December 2020."

33. We cannot see that there is any contradiction between those two paragraphs. As a fact the Appellant has been only "intermittently adherent" to treatment and medication (such is also clear from the medical records). She may be "most likely" to access treatment here but the fact that she does not always do so remains relevant to the issue of the treatment she might need or seek in Pakistan which is a factor relevant to the situation facing her on return to Pakistan.

34. Moreover, the Judge was at [24] of the Decision leading up to consideration of the Article 3 ground dealt with at [25] of the Decision. In that context, it was incumbent on the Judge to consider the treatment which the Appellant is receiving in the UK and what treatment she would therefore require on return and the availability of that treatment in Pakistan. We observe in passing that Mr Clarke pointed us to [5.3.1] of the CPIN which confirms that the medication which is prescribed to the Appellant is available in Pakistan.

35. As Mr Clarke submitted, what is said at [24] of the Decision must also be read with [23] of the Decision. As there noted, and as Mr Clarke pointed out, there is limited evidence about treatment which the Appellant has been receiving (as opposed to the prescription of medication). There are references to care plans in the medical records but those are not produced. Even the reports/letters relied upon in evidence to which we refer above were quite outdated by the time of the

hearing before Judge Manuell. The Psychologist's Report was dated about two years prior to the hearing. The letters of Dr Carter and Dr Anderson were dated over two years before that hearing. Whilst the Psychologist's Report and letters were generally supportive of the Appellant's claim, as the Judge pointed out at [23] of the Decision, "the Appellant has not shown that she is part way through a course of treatment in the United Kingdom which might improve her mental health".

36. Based on the Judge's assessment of the medical evidence, he was entitled to find that the Appellant's need for treatment was not continuous and that, in any event, such treatment would be available to her particularly in an urban area to which she could reasonably relocate. Ground three also therefore fails to identify any error of law.

CONCLUSION

37. The grounds of appeal do not identify any error of law. Although the Judge did not refer to the paragraphs of the CPIN to which the Appellant now says he should, we do not accept that he was bound to do so. In any event, those paragraphs do not make any difference to the Judge's conclusion.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Manuell dated 23 February 2023 does not contain a material error of law. We therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2023