IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001330
First-tier Tribunal No:
PA/00382/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

Mr Raza Khurshid
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Mr Tan (Senior Home Office Presenting Officer)

Heard at Manchester Civil Justice Centre on 31 August 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge C. R. Cole, promulgated on 14th March 2023, following a hearing at Manchester Piccadilly on 23rd February 2023. In the determination, the judge allowed the appeal of the Appellant (who will in this decision continue to be so referred), whereupon the Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 23rd July 1984. He appealed against the refusal of his protection claim by the Respondent Secretary of State dated 15th February 2021 and the grant of leave to remain in the United Kingdom.

The Appellant's Claim

3. The Appellant had arrived in the United Kingdom on 31st May 2011 on a visit visa but then returned back to Pakistan on 4th May 2013. He then came back to the UK on 20th June 2013 and the following year on 18th December 2014 his wife claimed asylum with the Appellant being recorded as her dependant. The Appellant's wife's claim was refused in a decision dated 18th August 2016. Following this, the Appellant himself applied for asylum on 17th September 2016 and this was then refused on 15th February 2021. The essence of the Appellant's asylum claim now was that he was a Shia Muslim who had embarked on a romantic relationship with a woman of the Sunni faith around 2009, whom he went on to marry in 2011. Her name was Mehwish Raza. He was then beaten up by "unknown" people. He had come to the UK with his wife on 31st May 2011 because their respective families had been reluctant to accept their relationship. It was only in the UK that he told his wife that he was a Shia Muslim. Her family threatened to kill him. He returned back to Pakistan on 4th May 2013 in an effort to sort out the problems. He then returned back to the UK on 20th June 2013 where the threats from his wife's family continued. Thereafter, he and his wife split up while he was in the UK. She had full custody of his child. He has not seen his wife and child for the last two year. He is now suffering from bipolar disorder and schizophrenia and he takes medication to control his condition. He has claimed asylum for fear that he will be killed by his wife's family or even by his own family because of his marriage.

The Judge's Findings

4. At the hearing before Judge Cole on 23rd February 2023 the Appellant did not appear and nor was he represented. The judge recorded that the Appellant had not only failed to attend the hearing but that "the Appellant had failed to engage in the appeal process and had failed to attend numerous previous Case Management Review Hearings" and that "No adjournment was requested by the Appellant and the case file revealed that the papers were properly and timeously served on the Appellant ...." (paragraph 11). There was medical evidence from the Appellant's side which showed that he had a "chaotic lifestyle and his issues with engaging with the authorities". Judge Cole went on to state that "It seemed to me that it was highly unlikely that the Appellant would ever attend the Tribunal" and that on that occasion the matter was put back to the judge's list "to give the Appellant every opportunity to attend" (paragraph 12). When the judge was satisfied that the Appellant would not attend on the day of the hearing he proceeded to determine the appeal.

5. The judge observed that there had been a previous decision by Judge Thorne which "covers much of the same factual matrix as the Appellant's asylum claim" (at paragraph 18) on the present occasion. This meant that the guidance contained in **Devaseelan [2002] UKIAT 00702** applied (at paragraph 19). Judge Thorne had also considered the Appellant's wife's claim to be at serious risk in Pakistan "due to a mixed marriage to the Appellant" (paragraph 22) but went on to record that this claim was "entirely incredible" and that it was "outlandish" such that he dismissed the appeal (see the determination of Judge Cole at paragraph 23). Judge Cole now observed that the Appellant's current

claim "is based on the same factual matrix regarding issues with his family because of his marriage". Although it was of note that "the Appellant separated from his wife and child many years ago and no longer has contact with them" (paragraph 24). The judge went on to apply "anxious scrutiny" (paragraph 25). The judge rejected the protection claim (at paragraph 27 – 28). The Appellant's claim for humanitarian protection was likewise rejected (paragraphs 35 and 31).

6. The judge did, nevertheless, go on to consider the Appellant's medical condition and the possible application of Article 3 healthcare issues with the citation of the case law (at paragraph 33). The judge observed that, "I am willing to accept that the Appellant is seriously ill" (paragraph 34). Nevertheless, the judge held that "the evidence presented does not demonstrate that there are substantial grounds for believing that there is a real risk that, if returned to Pakistan, appropriate treatment would be absent or inaccessible to the Appellant …". Nor was it the case that "a lack of access to appropriate treatment would expose the Appellant to a serious, rapid and irreversible decline in their state of health resulting in intense suffering" (paragraph 35). The judge even added that although it was not clear from the medical evidence exactly what appropriate treatment was require for the Appellant's mental health issues, "the country information referenced by the Respondent in the RFRL indicates that there is a substantial public health programme in Pakistan and that there is sufficient provision for the treatment of mental illness" (paragraph 36). Indeed, the judge pointedly stated that, "There is no evidence provided to counter the Respondent's evidence" (paragraph 36).

7. The judge then went on to consider the psychiatric report of Dr Hyland, on the Appellant's behalf, which had been prepared around November 2020 and which states that the Appellant's removal "may cause a subsequent deterioration in his mental health" (see paragraph 37 of Judge Cole's determination). Having considered, the judge nevertheless still concluded that "There is insufficient evidence to show that there are substantial grounds for believing that there is a real risk the Appellant would be unable to access necessary medication in Pakistan" (paragraph 38). The judge accordingly concluded that the Appellant's removal would not breach his Article 3 ECHR rights (paragraph 40).

8. Finally, the judge went on to consider the Appellant's right to respect for his private life as protected by Article 8 ECHR. He noted that "It was submitted that there would be very significant obstacles to the Appellant's integration into Pakistan" (paragraph 41). This being so, the judge had regard to the leading authorities on the concert of integration, namely, **Kamara [2016] EWCA Civ 813**; **Treebhawon [2017] UKUT 00013**; and **Parveen [2018] EWCA Civ 932** (at paragraphs 42 to 44). Here however, the judge concluded that "The assessment of the very significant obstacles to integration issue is a much more complex and finely balanced aspect of the Appellant's case" (paragraph 45). Judge Cole observed how "The medical evidence presents a picture of the Appellant as a person who has numerous difficulties and has struggled to integrate in the UK" (paragraph 46). This was despite the Respondent's submission before the judge that "the Appellant knows the culture in Pakistan and that he will have support from family and friends in Pakistan", such that "this will allow the Appellant to be able to successfully reintegrate into Pakistan society". The judge's conclusion in this respect, however, was that "I find this to be an overconfident and simplistic assessment by the Respondent when the overall evidence is considered" (paragraph 47).

9. Judge Cole had regard to the previous decision by Judge Thorne who in 2016 had observed that "in the UK the Appellant was diagnosed with bipolar disorder in January 2013" and that he had "been violent towards his wife" and that he had even been "detained under the Mental Health Act at the end of 2012". In fact there was also evidence that "he had been diagnosed with bipolar affective disorder in Pakistan in July 2011 and had spent three months in hospital" (paragraph 48). In the United Kingdom itself, there was evidence of Discharge Summary dated 19th May 2020 which diagnosed him as having "antisocial personality disorder" (paragraph 49) and the clinical narrative of this summary went on to state that the Appellant had arrived with six police officers and "was observed as screaming and shouting, kicking the doors and appeared thought disordered" (paragraph 50). A further discharge summary of 10th November 2020 added further detail to the effect that the Appellant's mental and behavioural disorder was "due to alcohol and illicit substances" so that "over the last couple of years he has consistently used illicit substances which have probably contributed to his erratic presentation" (paragraph 52).

10. The discharge summary had gone on to add that the Appellant "did not have an underlying mental illness but a diagnosis of antisocial personal disorder, worsened by the use of drugs, and possibly spice" at paragraph 53. On 2nd April 2022 Dr Ruth was the Appellant's treating psychiatrist and she described him "currently manic with psychotic symptoms" (paragraph 54). She described his delusional behaviour stating that he "expresses grandiose delusions for example a belief that he is Jesus or superman" (paragraph 55). The Appellant's tendency to be "physically aggressive when unwell" (paragraph 57) was also highlighted by Dr Ruth. Indeed, Dr Ruth had gone on to say that "would require ongoing follow up from the community mental health team" (paragraph 58). A further report on 14th February 2023 from Dr Zaman (at paragraphs 62 to 63) also painted a grim picture.

11. Against this background, Judge Cole went on to conclude that the Appellant had been in the UK "for almost twelve years with only visit to Pakistan in May/June 2013" and that he was "estranged from his wife and child with whom he no longer has contact" and that there was no evidence of any friends or acquaintances or other social contacts in the UK (at paragraph 64). The Appellant was indeed struggling himself "to integrate into the UK" (paragraph 65). The judge set out the Appellant's medical problems on the basis of the diagnosis (at paragraph 68) and noted how "His behaviour is socially unacceptable" and that "the Appellant typically presents as manic with psychotic symptoms" (paragraph 69). The Appellant had failed previously to engage with the support officer "and has been non-compliant with his medication" upon the basis of which the judge the concluded that, "I accept that the risk of non-compliance will be higher in Pakistan, and that non-compliance can cause relapse of his illness and make him unwell which will potentially lead to risks as in past" (paragraph 70).

12. The judge then made the finding that "the Appellant would not have access to sufficient support and assistance in Pakistan to avoid him relapsing into illness" as there was "no evidence that the Appellant is in contact with his family, and no evidence to suggest that they would be willing to assist the Appellant in relation go coping with his addiction and mental health issues" (paragraph 71). Given this, and noting in particular his history of aggression and opposition to those in authority, Judge Cole concluded that "the Appellant is unlikely to be able to access adequate support even if it were to be available" (at paragraph 72).

13. The result was that "the Appellant's illness and behaviour is more likely than not to continue as it has in the UK over the last several years" (paragraph 73). The judge was in no doubt that "will have less support in Pakistan and that his risk of non-compliance is likely to be significantly greater in Pakistan". Indeed, the judge's view was that "the authorities in Pakistan are likely to be far less tolerant toward the Appellant's anti-social behaviour" (paragraph 73).

14. The judge concluded that there would be "very significant obstacles" to the Appellant's reintegration into Pakistani society and that this being so, his removal to Pakistan would breach his Article 8 rights (paragraph 76). The appeal was allowed.

Grounds of Application

15. The grounds of application by the Secretary of State against the judge having allowed the Appellant's appeal were that the First-tier Tribunal made a material error of law, if it was the case (as the judge suggested at paragraph 10 of the determination) that, "the Appellant did not provide any evidence in support of the appeal". Nevertheless, it was contended, that the judge went on to allow the appeal with the observation (at paragraph 71) that, "I find that the Appellant would not have access to sufficient support and assistance in Pakistan to avoid him relapsing into illness", and that "there is no evidence that the Appellant is in contact with his family, and no evidence to suggest that they would be willing to assist the Appellant in relation to coping with his addition and mental health issues". The judge, it was further argued, had no basis upon which to make the finding that, "I find that the Appellant will have less support in Pakistan and that his risk of non-compliance is likely to be significantly greater in Pakistan" (at paragraph 73). In short, the judge's assessment of whether there would be "very significant obstacles to integration" on return to Pakistan was without any evidential basis.

16. On 5th April 2023, permission to appeal was granted by the First-tier Tribunal on the basis that it was for the Appellant to establish that he met the requirements of the Immigration Rules, and that he had to do so on a balance of probabilities, given the failure of the Appellant to attend the appeal hearing, and to provide evidence that he would have no support from family or friends on return to Pakistan. There was also no basis for the finding that the Appellant would be unlikely to access medical treatment on return given that he had done so in the United Kingdom. Similarly, there was on evidence for the conclusion that the Appellant would be less compliant. In undergoing treatment then he was in the United Kingdom if he had to do the same in Pakistan.

Submissions

17. At the hearing before me on 31st August 2023, the Appellant was again not in attendance, and nor was there anyone representing him on his behalf. Mr Tan submitted that the judge was wrong to have made the findings of fact that he did. If one looks at question 31 of the asylum interview where the Appellant is asked "What family members do you have in Pakistan?", he answers by stating that, "two sisters, one brother and my parents – that is my immediate family and then some other relatives". This clearly meant, submitted Mr Tan, that the Appellant could elicit the help of close family members to help him in his reintegration into Pakistani society. Indeed, the Appellant had historically sought medical treatment in Pakistan. Furthermore, his medical condition is such that it goes through peaks and troughs so that he has been able to engage on a

voluntary basis with the medical services in Pakistan, where there are substantial medical services available for the Appellant to use. Moreover, the Appellant did not assert the existence of "very significant obstacles" in his path if he had to relocate to Pakistan, but only relied upon Article 8 and the judge had of his own volition embarked upon a assessment of this matter.

Error of Law

18. I am satisfied that the making of the decision involved the making of an error on the part of the judge below. My reasons are those that had been identified by Mr Tan. The Appellant has the availability both of medical services in Pakistan, which he has voluntarily been able to access in the past, as well as close family members at hand to assist him in being able to do so. The finding by the judge, in what was a very carefully structured and sensitively compiled determination unfortunately overlooked this, in an appeal where the Appellant had chosen not to attend and was unrepresented, thus putting the judge in question under the difficulty of having to work out these matters for himself, which to his credit he undertook very painstakingly. Nonetheless, for the reasons identified by Mr Tan, the judge fell into error.

Re-Making the Decision

19. I am allowing the appeal of the Respondent's Secretary of State for the following reasons. First, the Appellant has in his asylum interview himself accepted that he has close family members in Pakistan in the form of two sisters, one brother and parents, as well as other relatives (Q.31). They live in Lahore (Q.32). His father is a retired army officer (Q.33). His brother is also gainfully employed. The Appellant has also been in contact with them "when I was in hospital" (Q.39) and there is no reason why he cannot continue to remain in contact with them should he chose to do so. The Appellant himself has lived in Lahore and has not lived anywhere else (Q.44).

20. Second, it is plain that the Appellant had been able to access medical services in Pakistan before his arrival in the UK. This is recorded by Judge Cole when he refers to the previous decision of Judge Thorne in 2016 noting that, "There was evidence that he had been diagnosed with bipolar affective disorder in Pakistan in July 2011 and had spent three months in hospital" (paragraph 48).

21. Third, Judge Cole had himself earlier accepted in his decision that:

> "the evidence presented does not demonstrate that there are substantial grounds for believing that there is a real risk that, if returned to Pakistan, appropriate treatment would be absent or inaccessible to the Appellant and that a lack of access to appropriate treatment would expose the Appellant to a serious, rapid and irreversible decline …" (paragraph 35).

22. Judge Cole had also carefully noted that "there is a substantial public health programme in Pakistan and that there is sufficient provision for the treatment of mental illness", such that, "There is no evidence provided to counter the Respondent's evidence" (paragraph 36). Indeed, I note that the psychiatric report of Dr Hyland in around 2020 simply asserted that the Appellant's removal "may cause a subsequent deterioration in his mental health …" (paragraph 37 of Judge Cole's determination), and with the assistance of close family members, together with the judge's finding later that "There is insufficient evidence to show that there are substantial grounds for believing that there is a real risk the

Appellant will be unable to access necessary medication in Pakistan" (paragraph 38), I conclude that the Appellant is returnable without a violation of his Article 8 human rights.

23. As to the question of whether there are "very significant obstacles" (a matter not raised by the Appellant himself) it is well-known that it is for the Appellant to identify factors that go beyond mere hardship, inconvenience or upheaval (**Treebhawon [2017] UKUT 00013 (IAC)**). The fact is that whilst the Appellant may face hardship upon return home, there is no evidence that he would face very significant obstacles given that he does have immediate family members in Lahore where he has previously lived and where he has accessed medical treatment on a voluntary basis before.

24. In this respect, what is said in **Parveen [2018] EWCA Civ 932** is instructive when the Court of Appeal considered the test and Underhill LJ stated (at paragraph 9) that, it is fair enough to observe that the words "'very significant' connote an 'elevated' threshold, and I have no difficulty with the observation that the test will not be met by 'mere inconvenience or upheaval'". In coming to these conclusions I have remade the decision on the basis of the findings of the earlier judge, the evidence before him, and the submissions that I have heard today from Mr Tan. The Appellant fails to succeed for the reasons here set out.

Notice of Decision

25. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. The appeal of the Appellant is dismissed.

Satvinder S Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18th October 2023