



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004212

First-tier Tribunal Nos: HU/56562/2021  
IA/15513/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 6<sup>th</sup> of December 2023

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**MR FAROOQ AHMAD**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Ali, Legal Representative

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard at Field House on 6<sup>th</sup> November 2023**

**DECISION AND REASONS**

**Introduction**

1. I do not make an anonymity decision in respect of this case. No anonymity has been sought and I see no reason to make an anonymity order in this case.
2. I provided this oral decision at the hearing today.
3. This matter relates to an appeal against the decision of First-tier Tribunal Judge Khawar which was heard at the Taylor House Hearing Centre remotely on 15<sup>th</sup> March 2023. The judge had dismissed the appeal by way of a decision dated 1<sup>st</sup> September 2023. The application related to an appeal by the Appellant on human rights grounds both within and outside of the Rules, in particular because of serious medical issues which were relied upon by the Appellant.

**The Appellant's Grounds of Appeal**

4. The grounds of appeal can be summarised as follows. That the First-tier Tribunal Judge materially erred in law by not taking into account YouTube links which were sent to the judge's clerk on the same day as the hearing. It is said in the grounds of appeal "The links clearly explain that the monitor in question provides him oxygen, which was not considered by the FtTJ".
5. It is also said by the Appellant that the judge materially erred in law because the Appellant had provided a letter dated 2 September 2021 from Dr Sharmilee Gnanapavan, a consultant neurologist, that "he is unable to travel" and a letter dated 16 September 2021 by Dr Gnanapavan which said, "he is currently not fit for travel as the condition is unpredictable". The ground of appeal being expressed as follows,

*"These evidences are completely over looked by the FtTJ and he concluded that there is no reliable evidence to establish that the appellant would not be able to travel from his home to Heathrow airport and to travel on a flight to Pakistan. Moreover, the appellant sought to offer to pay off his debt in the sum of £10-£20 per month, confirms his intentions to pay this debt, however, FtTJ used his own mind by saying 'I suspect the respondent would consider such an offer to be derisory'. The appellant believes that the fact finding FtT Judge should be neutral however this was not the case".*

6. Permission to appeal was granted by First-tier Tribunal Judge Athwal by way of a decision dated 26 September 2023. It was said:

*"The grounds assert that the Judge erred by failing to take into consideration all material evidence, in particular information about the oxygen machine the Appellant was using at the hearing, and the evidence of Dr Sharmilee, a consultant neurologist, about the Appellant's ability to travel".*

### **The Hearing Before Me**

7. I have heard extensive submissions from Mr Ali with a view to understanding what may or may not have happened at the hearing and I have been assisted today by Mr Ali, and indeed by Ms Everett. It is clear that the judge during the discussion part of the hearing did invite further explanation in relation to a machine which was said to be being used by the Appellant.
8. Following the hearing, on the same day, Mr Ali, the Appellant's legal representative, had sent an email to the judge's clerk attaching a link to a YouTube video and a link to a company that provides a machine called a ResMed machine. It is also said to be a Stellar 100 Bipap machine. I along with Ms Everett viewed that video today. It is in the Urdu language but has subtitles for some parts. It shows how one can use the machine and sets out clinical parameters. If I seek to describe the machine it perhaps looks like a relatively small contraption similar to a very small cylinder vacuum cleaner and one can take off the plastic attachments.
9. Mr Ali in his submissions said that there was a material error of law because the judge had not taken into account the letters from the medical practitioners and that the judge was wrong to conclude that the Appellant was thereby fit to travel.
10. Ms Everett in her submissions said that there was no material error of law and in any event even if the judge did not take into account the YouTube videos, that was of no consequence because in reality it was difficult to see how it would have

assisted the judge to come to a different conclusion. Ms Everett queried whether in the circumstances there was a difference between ventilation and breathing, and whilst her ignorance in respect of those matters may be of no significant consequence, the point was that this was not sufficiently explained to the judge.

11. I invited Mr Ali to assist me with various aspects of his grounds of appeal. Firstly I invited him to assist me with the up-to-date evidence, which was available to the judge, and secondly, how it was that the YouTube videos and link may have assisted the judge to come to what he says would be a different conclusion. In particular, I invited focus on several aspects in relation to the judge's decision.

### **Decision and Analysis**

12. I refer first to paragraph 33 of the judge's decision which said as follows:

*"Further and in any event, even if the appellant does require assistance from outside source oxygen, (which I find is not established), there would appear to be no reason why the appellant could not be supplied with a mobile oxygen supply/tank, to take with him during his journey, not only between his home and Heathrow Airport but also during a flight to Pakistan".*

13. This in my judgment clearly shows that the judge considered the case in the alternative, namely even if he was wrong and the Appellant did require an outside oxygen source that there was simply no basis upon which it could be said that that oxygen would not be available to the Appellant on his journey both from his home in the southeast area to Heathrow Airport and then from there on the flight from Heathrow Airport to Pakistan. I shall return to this but in my judgment, this has not been adequately dealt with in the grounds of appeal or in the submissions before me on behalf of the Appellant. In my judgment this is fatal to the Appellant's appeal.

14. However, for the sake of completeness I shall deal with the other grounds of appeal. Firstly in my judgment it is clear when one looks at the letter at page F87 (also referred to as page 150, of the bundle) which is a letter dated 16 September 2021 signed by Dr Sharmilee Gnanapavan, a consultant neurologist dated 16 September 2021, that the consultant concluded:

*"The long-term prognosis is good as long as he continues to receive his treatments, the short-term prognosis fluctuates based on his breathing difficulties but treatment still works with no evidence of resistance to the treatments. He is currently not fit to travel as the condition is unpredictable in Mr Ahmad".*

15. There are then two other medical letters which have been provided in the bundles. There is another of the same date, 16 September 2021, this time at page 6 of the bundle but that is a duplicate of the earlier letter of the same date, and there is also a letter dated 2 September 2021 where Dr Sharmilee Gnanapavan said:

*"Farooq has significant health issues due to myasthenia gravis, for which he is under the care of the Neurology Team at Barts Health, and significant heart failure for which he has also been seen at the hospital. He has significant mobility issues and breathing difficulties. As such, he is unable to travel. I would be grateful if you would take all his health issues into account when considering his family from Pakistan".*

16. I explored this with Mr Ali inviting him to assist with whether this was actually a letter in support of an application for entry clearance by the Appellant's family. Mr Ali said he did not know but he certainly agreed that that was the indication in the letter.
17. Returning to the judge's decision, I observe it is a detailed decision in which firstly the judge from paragraphs 1 to 12 considered the background to the case. At paragraphs 14 to 20 the judge considered the Appellant's case including that the Appellant had arrived in the United Kingdom as a visitor for medical treatment in 2010. In 2016 the Appellant had applied to remain in the UK on the basis of a human rights claim. That claim was refused and certified in 2016, and then it was on 11 September 2020 that the Appellant had made this application which was then refused by the Secretary of State and had come for hearing before the FtT. The judge noted that the Appellant's wife and children and extended family continue to live in Pakistan. At paragraphs 21 to 33 the judge considered his findings and made his conclusions.
18. Thereafter the judge at paragraph 35 considered the Supreme Court's decision in **AM (Zimbabwe) [2020] UKSC 17** and the judge also noted at paragraph 37,

*"For the sake of completeness, I find in any event that there is no medical evidence submitted to establish that the appellant's condition is life-threatening or that 'undertaking a journey or having a short break from treatment whilst relocating is likely to have a hugely detrimental effect on your condition'"*

and the judge noted that this was something that was said by the Respondent at paragraph 33 of the refusal letter. The judge said that he was coming to the same conclusion.

19. Further, in respect of the history of the Appellant, the judge noted that there were considerable sums which remained outstanding for medical treatment. The largest sum was some £134,000 which was due to be paid to Barts Health NHS Trust, a smaller sum of £705 and a relatively large sum of some £12,000. The judge said that seeking to pay off the debt in the region of £10 to £20 per month and, although not an issue for him to resolve, he thought that the Respondent would consider such an offer to be derisory. It was accepted by the Appellant that he has failed to pay the outstanding NHS charges and that the debts were not disputed.
20. Having looked at the matter I was also taken to one entry within the very extensive medical records which relate to July 2019. There is reference to ischaemic heart disease. In fairness to the judge I invited Mr Ali to tell me if he had brought any of the specific medical records to the judge's attention because clearly the judge cannot be assumed to have detailed medical knowledge or to go through every line of several years and hundreds of pages of medical records.
21. Having considered the matter, I conclude that there is no material error of law in the judge's decision.
22. My reasons for coming to that conclusion are as follows. Firstly, the judge was correct to say that he had no up-to-date medical evidence on behalf of the Appellant. The hearing before the judge was in March 2023, but the medical reports, such as they are, were dated 2 September 2021 and 16 September 2021. Therefore at least eighteen months out of date.

23. Secondly, the GP and hospital records were before the judge but there was nothing specific brought to the judge's attention from those records. In any event I invited Mr Ali to tell me if there was any part of those extensive documents that he wished to bring to my attention today. Other than to say that there is an entry for July 2019 which referred to ischaemic heart disease there was nothing that Mr Ali sought to bring to my attention. I do not see how that entry in the medical records from 2019 could have altered the judge's decision in March 2023.
24. In the circumstances in my judgment it is clear there is no material error of law in relation to the judge failing to consider any specific part of the medical records. The Judge could not do so if no such specific documents were brought to his attention.
25. Thirdly, in any event paragraph 33 of the judge's decision makes it absolutely clear that even if the Appellant did require an outside source of oxygen there was simply no evidence that that could not be supplied to the Appellant on his journey to Heathrow Airport and then onto a flight.
26. Therefore, although I accept that the judge's clerk was sent an email with a link to the YouTube video which I have described earlier in this judgment, and a link to what the ResMed machine is, it would have made no difference to the outcome of the hearing. The YouTube link and other link do not assist to deal with the actual matter itself.
27. In my judgment, although this does not affect the outcome, it is probably just as clear that such a machine could in fact be used by the Appellant on his journey. Whether that is right or wrong really indicates the nature of the lack of sufficient evidence and information for the judge to enable him to come to a decision other than one in which he had to dismiss the appeal.
28. Ultimately, the burden remained on the Appellant to explain to the judge what the medical evidence was and how at the date of the hearing it would have impacted on the inability to travel. For the avoidance of doubt I accept that the two letters dated 2 September 2021 and 16 September 2021 refer at that stage to "currently" not being fit to travel. That was not the finding of the judge as at the date of hearing in March 2023 though and the Judge was entitled to come to that conclusion.
29. I am not conducting a fresh hearing on the evidence or a hearing as a primary fact-finder. I have to be satisfied that there is a material error of law in the judge's decision. In my judgment there is no such error of law in the First-tier Tribunal Judge's decision. I accept that the Appellant has medical ailments, I accept that he may well wish to remain here in the United Kingdom, but ultimately my task is to consider whether there is a material error of law. I conclude that there is not.

### **Notice of Decision**

**There is no material error of law in the judge's decision.**

**The decision of the First-tier Tribunal thereby stands which had dismissed the Appellant's appeal.**

**Abid Mahmood**

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Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 November 2023**