IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003379
First-tier Tribunal No:
PA/51450/2020
LP/00069/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 August 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY
UPPER TRIBUNAL JUDGE O'BRIEN

Between

BR
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Georget, of Counsel, instructed by House of Immigration Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 30 July 2024

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

Introduction

1. The appellant is a citizen of Pakistan born in 1974. He arrived in the UK on 29th May 2004 and remained in this country as a Tier 4 student migrant and with leave as part of the international graduate scheme until 2012. He then overstayed. In 2012 he made a human rights claim which was refused in 2013. In October 2018 he was detained and on 17th October 2018 he made a protection and human rights claim. This claim was refused on 12th June 2020. His appeal against this decision was allowed by First-tier Tribunal Judge Stedman after a hearing on the 16th May 2022 on Article 8 ECHR grounds, but dismissed on protection grounds.

2. Permission to appeal was granted to the Secretary of State by Judge of the First-tier Tribunal Rhys-Davies on 2nd August 2022 on the basis that it was arguable that the First-tier judge had erred in law in allowing the appeal on Article 8 ECHR grounds. Upper Tribunal Judge Allen decided in a decision promulgated on 17th January 2023 that the First-tier Tribunal had erred in law, for the reasons set out in his decision which I append as Annex A to this decision, and set aside the decision and all the findings related to Article 8 ECHR.

3. The matter comes before us pursuant to a transfer order to remake the Article 8 ECHR appeal. It was listed for 25th April 2023 but was adjourned by Upper Tribunal Judge Lindsley in the interests of procedural fairness as neither the respondent nor the appellant had received the error of law decision. As no one could be certain why this had happened Judge Lindsley decided that it was fairest to proceed from the position that something had gone wrong in sending out the decision to the parties. The appellant's representative (Mr Georget) requested an adjournment for three months for new psychological evidence to be obtained in light of having read the decision of Judge Allen for the first time whilst awaiting the hearing and discovering that Judge Allen had concluded that the evidence before the First-tier Tribunal was insufficient to meet the test of very significant obstacles to integration.

4. The appeal now comes back before us. The appellant is a vulnerable witnesses and we treated him as such in the proceedings in the Upper Tribunal.

5. We drew to the parties attention the fact that it was now clearly the case that the appellant had lived in the UK for 20 years, having entered the UK on 29th May 2024. The parties had already had a discussion regarding this issue. We jointly considered the provision of the Immigration Rules at paragraph 5.1 of Annex PL of the Immigration Rules. It was agreed by both parties that the appellant met the requirement at PL 5.1(a) as he had been over the age of 18 years at the date of application and had been continually resident in the UK for more than 20 years. It was also agreed that applying TZ (Pakistan) v SSHD [2018] EWCA Civ 1109, as the appellant could meet the requirements of

the Immigration Rules, that he was entitled to succeed in his appeal because removal would be a disproportionate interference with his right to respect for his private life ties with the UK as protected by Article 8 ECHR.

Conclusions - Remaking

6. We remake the appeal by consent allowing it on the basis that removal of the appellant from the UK would be a disproportionate interference with his right to respect to private life given his ties with the UK as there is no public interest in his removal as he can meet the requirements of the Immigration Rules.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

2. Upper Tribunal Judge Allen set aside the decision of the First-tier Tribunal allowing the appeal under Article 8 ECHR.

3. We re-make the Article 8 ECHR decision in the appeal by allowing it.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31st July 2024

Annex A: Error of Law Decision

Annex A: Error of Law Decision

DECISION AND REASONS

1. The Secretary of State appeals with permission to the Upper Tribunal against the decision of the First-tier Tribunal allowing on Article 8 grounds the appeal of B R. I will refer hereafter to B R as the appellant, as he was before the judge, and to the Secretary of State as the respondent, as she was before the judge.

2. The appellant sought international protection and also made a human rights claim. His claim was based on attacks and ill-treatment he claimed had taken place when he was living in Pakistan when he opened and ran a small co-educational school. He had had to close the school but had initiated a further programme for the education of girls and lobbied door to door. He claimed to have been attacked in 2002 and 2004.

3. He came to the United Kingdom in May 2004 but returned to Pakistan in January 2006. He claimed to have experienced severe ill-treatment from the police on that occasion. He returned to the United Kingdom a month later but went again to Pakistan in July 2008 where he stayed for twenty days. He claimed that he was mostly in hiding during that time but was still threatened by the same people.

4. The judge did not accept the claim to be at risk of persecution or serious harm. He accepted that the appellant was committed to the education of girls and that his aims and objectives were realised in his starting a small school for girls. He accepted that he had been forced to close the school because of certain individuals who caused him sufficient difficulties and personal troubles that he was forced to abandon his work. There were inconsistencies in the appellant's account which led the judge to conclude that it was far from clear what level of harm he had personally suffered. The judge was unwilling to accept that the appellant had encountered adverse treatment of a sufficient level of severity to amount to serious harm. He said that even if he were wrong in that regard the appellant's subsequent behaviour and actions demonstrated that he was no longer at risk of harm. He had returned to Pakistan twice but on his version of events having encountered serious harm, and he made no attempt to bring those matters to the attention of the respondent until nearly a decade later. The respondent's reliance on section 8 of the Asylum and Immigration Treatment of Claimants etc.) Act 2004 was found to be substantiated.

5. The judge went on to conclude that the evidence in the round did not demonstrate that the appellant had come to the attention of the extremist groups in the way he had described or that he had been previously harmed in the way he had described. He accepted that the appellant did approach the police to report his difficulties but that did not lead him to conclude that he had been a victim of serious harm such as to engage the Refugee Convention or breach his fundamental human rights. The judge found that the appellant had seriously embellished his difficulties in Pakistan in order to create a claim for asylum. 6. The judge however allowed the appeal under Article 8. First of all he found that the appellant had shown that there were very significant obstacles to his integration in Pakistan in accordance with the requirements of paragraph 276ADE(1)(vi) of HC 395. The judge directed himself to take a broad evaluative

approach to the concept of integration as set out by the Court of Appeal in Kamara [2016] EWCA Civ 813.

7. The judge observed that the appellant had essentially been living in the United Kingdom since 2004 and returned for a short period of time in 2006 and 2008. Though the judge found that the appellant did not have a well-founded fear of harm based on his historical account, the issue of his subjective fear was separate. The judge accepted that the appellant's concerns were very linked to his past in general terms and an ongoing anxiety about his predicament and the prospect of being forced to return to Pakistan. He accepted by reason of the appellant's past experiences with the opening and closure of his school and possibly also by negative experiences when he went back to Pakistan in 2006 and 2008 that he had genuinely held beliefs that he would come to some form of harm if returned. The judge had no doubt that any such feelings were compounded by the appellant's depression and anxiety with which he had been diagnosed. He had agreed to treat the appellant as a vulnerable witness based on the report which diagnosed him with moderate to severe depression and anxiety and that had informed his assessment of the evidence as a whole but also specifically was informed by his decision on this aspect of the human rights claim.

8. The judge went on to observe that even if the appellant's asylum claim was hypothetically rejected it remains that in accordance with the objective information he would not be able to continue his pro-education activism in Pakistan. Both his parents had passed away. The judge went on to cite the difficulty he had in determining whether the appellant would face very significant obstacles to his integration as arising from the points made by the respondent pertaining to both the life the appellant had previously had in Pakistan, formed through childhood into adulthood, the majority of it being spent there. Add to that was the fact that he had family members in Pakistan to whom he might be able to turn for assistance in helping him reintegrate and find work for example. There was no reason why the appellant would not be able to find work ultimately given his experience.

9. The judge concluded that in the final analysis the appellant would face very significant obstacles on return in the light of his specific circumstances, his character and his mental health problems. He found that the appellant did have very real concerns about returning to Pakistan and that he had a subjective fear or serious anxiety about returning because of his past. He had been in the United Kingdom for eighteen years, and though the judge acknowledged that there was no "near miss" principle, in that he fell short of the twenty years requirement, and it was not a factor in his assessment of the difficulties the appellant would face on return in terms of integration but it did go to show that he had formed a substantial private life and ties in the United Kingdom which he would be leaving behind to re-establish himself in Pakistan. He found that the appellant was just able to show that he would face very significant obstacles given his mental health state, his subjective fear of encountering problems which would in turn exacerbate his mental health problems and the time he had spent away from his country and the social ties.

10. The judge went on to make findings in respect of a broader Article 8 analysis. He found that the appellant had accrued a substantial private life in the United Kingdom. He bore in mind that he had remained in the United Kingdom for a long time away from his children and without the ability to work and sustain himself in the United Kingdom but that was a deliberate choice he

had made and one in contravention at least for some part of it of the Immigration Rules. The judge took into account the evidence showing the appellant's mental health difficulties and also brought to bear on the balance sheet the time he had spent in the United Kingdom which the judge said was in his view a significant factor on the appellant's side notwithstanding the fact that he was mandated to place little weight on time accrued while an individual's status was precarious for the purposes of Section 117B of the 2002 Act.

11. The judge concluded that even if he had not found in favour of the appellant in terms of very significant obstacles he would nevertheless have found that, adopting the structured approach, the appellant's removal would amount to a disproportionate interference with Article 8 rights, placing due weight on the length of time he had been in the United Kingdom, his social ties here and his mental health state. The judge noted that the appellant had worked in the United Kingdom, speaks English, had shown that he was able to integrate and even though these are all essentially neutral matters they formed part of the overall assessment, as did the fact that other than his immigration history which was poor at various periods of his stay and the legitimate aim of immigration control, there were no other serious public interest factors that weighed against the appellant.

12. The Secretary of State sought and was granted permission to appeal on the basis that the findings in respect of very significant obstacles were inadequately explained and contradictory, and did not identify the specific circumstances which impacted on the appellant's ability to reintegrate. The decision had failed to factor in that the appellant had a wife, children, siblings and cousins in Pakistan who would be able to assist him on return and it was relevant that he had spent the first 30 years of his life in Pakistan. It was argued that the judge had not properly addressed factors that would assist the appellant such as the finding that he was high minded and intelligent and had been able to integrate into the United Kingdom. It was said to be unclear why the finding that the undisputed fact the appellant would not be able to continue his proeducation activism in Pakistan was relevant. As regards the mental health issues there had been no evidence provided to show that help would not be available in Pakistan or that the appellant's condition would prevent him from reintegrating.

13. With regard to Article 8, it was argued that the judge appeared to contradict himself with regard to the issue of time accrued in the United Kingdom, in paragraph 31 of the decision. It was noted that the appellant had not had any leave to remain since 2012 and had stayed in the United Kingdom repeatedly making unsuccessful claims under one guise or another. His mental health had been given weight without it being said why it impacted on the decision and made removal disproportionate. It was argued that the findings were inadequately reasoned.

14. Permission to appeal was granted on all grounds.

15. In his submissions Mr Whitwell relied on the grounds. As regards the issue of very significant obstacles, it was argued that the context was important. It could be seen from the judge's findings at paragraph 21 of his decision that the appellant had seriously embellished his difficulties in Pakistan and this had not been limited specifically to the protection claim. Also, all his formative years had been spent in Pakistan and he had family there and the ability to work.

16. As regards the point made in Mr Mavrantonis's Rule 24 response that the judge could not have said more, the Secretary of State disagreed. In this regard first was the issue of subjective fear with depression and anxiety being suffered by the appellant. The judge made reference to this at paragraph 28 and 31 but one then had to look back at the evidence. Paragraph 89 of the bundle showed the scores in respect of diagnostic criteria and in a letter of 1 March 2019 as comprising a score of 17 on the measure of depression symptoms (PHQ9), which indicated symptoms in the moderate severe range, and as regards measure of his anxiety and worry symptoms (GAD7) he scored 12 indicating symptoms in the moderate range. It was the case that the respective scores in December 2019 were 10 and 9 and in August 2021 they were 6 and 5. It could also be seen in the letter from Dorset Healthcare University NHS Foundation Trust of 9 March 2020 that he had been discharged back to the care of his GP, the intervention having been completed and in the letter of 19 August 2021 Precious Lewis the high intensity practitioner who wrote the letter said she was confident that he now had the skills to manage his problems. There was no expert report as such but letters such as the one quoted from above. It was hard to unwind what was relevant with regard to the fear of return to Pakistan. There was also the suggestion in Precious Lewis's letter of 23 August 2021 he claimed that he was experiencing stresses including not seeing his family and his inability to work, both of which could be resolved by return to Pakistan. In his decision the judge said little more than that there were mental health issues and did not show the obstacles either in the reasoning of the decision or from what could be seen in the evidence.

17. There was also the issue of the appellant's pro-education activism. He had shown no inclination to manifest this in fourteen years in the United Kingdom and the Article 3 claim had been dismissed. It was hard to see how it would manifest itself in Pakistan so the findings in that regard were relevant.

18. With regard to the amount of time spent in the United Kingdom/away from the United Kingdom this did not show an inability to reintegrate into Pakistan. The test looked forward. It could be seen in paragraph 25 of the skeleton argument that had been before the judge that the appellant had worked lawfully in the United Kingdom as a nursing aide with the NHS between 2006 and 2013. Overall the judge needed to say more, and the reasoning was inadequate. It was also relevant to note that at paragraph 24 the judge said that the appellant demonstrated an ability to live in Pakistan which was relevant to the obstacles test also. Also, as set out at paragraph 33, where the judge attached weight to the appellant's ability to integrate into the United Kingdom it should be asked why that was not achievable in Pakistan. It was the case that the evidence had to be set out and considered as whole but it was necessary to set all the evidence out. All the issues such as his life in Pakistan with family and work there were inconsistent with the notion of him not being an insider with regard to integration.

19. As regards Article 8 outside the Rules, it might be thought from the first sentence of paragraph 30 that the judge had not conducted a full analysis. The point was as argued in the grounds that the decision was unreasoned as to why the appellant's private life was significant/afforded little weight under Section 117B. By importing the mental health factors into the assessment this infected the assessment for the reasons set out in respect of ground 1. Weight was for the judge but it seemed from paragraph 33 that the public interest was not regarded as sufficient in this case which was an error.

20. In his submissions Mr Mavrantonis argued with regard to ground 1 that the score of 17 recorded in the letter at page 89 indicated more/severe range and the measure with regard to anxiety and worry was in the moderate range. The point was that the Secretary of State had never disputed this at any point. It seemed there was an attempt perhaps to downplay the diagnosis but the appellant had not sought to embellish the diagnosis as could be seen from page 89 where it was said that there was no history, finding or risk of self-harm. It was what it was.
21. Also the appellant had not been in contact with his wife and children and that had not been disputed at the hearing.
22. Also with regard to the pro-education views of the appellant there was the question of what was accepted by the Secretary of State. He was a man with an activist/pro-feminist educational profile and he had been attacked and the schools had been attacked. The judge made findings as set out but had noted the time lapse for the claims made. Hence there had been no cross appeal. But looking at the evidence as a whole it had impacted on the assessment of very significant obstacles. The grounds were only a disagreement.
23. It could be seen from the judge's decision at paragraphs 26 to 29 in particular that many aspects of the claim were considered fully, and, taken together with the findings, this was open to the judge. It appeared that the subjective fear of harm seemed not to be disputed and there was the mental health element. His parents had died and he had concerns and a lengthy private life in the United Kingdom. It was the length of absence from Pakistan rather than the duration of the stay in the United Kingdom that was the point. The decision should not be considered in a vacuum. The judge had cited the correct authorities.
24. With regard to Article 8, Mr Mavrantonis emphasised the arguments he had made at paragraph 13 of his Rule 24 response as to the consideration by the judge of section 117B and the wider issues that were also to be considered in an Article 8 evaluation. The judge had done this.
25. As regards paragraph 31 of the judge's decision, Mr Mavrantonis disagreed with Mr Whitwell as to the interpretation of the use of the phrase "a significant factor". This did not equate to significant weight in respect of Section 117B. All the neutral matters were considered by the judge at paragraph 33 and he had applied the correct legal provisions. It was significant to the appellant's private life that he had had a very lengthy stay in the United Kingdom of now over eighteen years. All matters had been considered carefully. It was open to the judge to consider any other matters he thought were appropriate.
26. As regards the activist issue, the cause which had engaged the appellant in Pakistan would not have such weight in the United Kingdom. As could be seen from paragraph 7 of the judge's decision, he had not undertaken such work in the United Kingdom because it was not needed here as girls were not discriminated against. His choice of expression therefore was a subjective matter and he could not be required to suppress it with regard to theoretical return to Pakistan. The appeal should be dismissed but if the Tribunal disagreed then there would need to be a de novo hearing which he agreed could be in the Upper Tribunal.
27. By way of reply Mr Whitwell argued that the issue with respect to activism was not so much with being seen to be an activist in the United Kingdom in respect of this country but there seemed to a hiatus of such a characteristic with regard to helping females in Pakistan.

28. I reserved my decision.
29. It is right to consider the Article 8 decision, as Mr Whitwell argued, in the context of the decision as a whole, and in particular the findings the judge made in respect of credibility and the step to which if at all there is a common fact between the findings made.
30. It is relevant to note the judge's finding at paragraph 24 that the appellant had lived the majority of his life in Pakistan and on returning there in 2008 he had demonstrated an ability as well as a lack of fear for his safety to live there. Though it is not inconsistent to take into account the subjective fear that the judge found the appellant had, in contrast to the lack of a well-founded fear on an objective basis in respect of the protection claim, I see force in the argument that the judge did not adequately reason his findings with regard to the appellant's mental health. I have set out above salient aspects of the evidence in that regard, and it is of particular relevance to note as Mr Whitwell pointed out the decrease in the scores measuring the depression symptoms and the anxiety and worry symptoms between March 2019 and August 2021. Those scores had indicated a material improvement in the appellant's mental health during the period under consideration, and I consider that the judge erred in law in simply referring in general terms to the appellant's mental health problems and the diagnosis of moderate to severe depression and anxiety without specifically factoring in what was said by the providers of the medical evidence and the marked increase in the improvement in the scores over that period.
31. This is of particular relevance bearing in mind that on the judge's own conclusion he found the appellant was just able to show that he would face very significant obstacles on return to Pakistan. His mental health was clearly improving as can be seen also from the comment expressing confidence that he now had the skills to manage his problems, a comment made in 2021. It is also not irrelevant to take into account the failure specifically to mention in that regard the fact that the appellant has family in Pakistan and could work in Pakistan, both relevant factors to his mental wellbeing.
32. Bringing these matters together, I consider that the judge did err materially in his evaluation of the issue of very significant obstacles to integration. It is a high test, and I do not consider the evidence justified the conclusions that he came to in finding that the appellant had succeeded under the Rules in that regard.
33. This is relevant also to the evaluation of Article 8 outside the Rules, bearing in mind that I have found the judge erred in respect of his assessment of the evidence regarding the appellant's mental health difficulties, I consider he also erred as set out at paragraph 31 in concluding that the time the appellant had spent in the United Kingdom was a significant factor on his side. This contrasted with the judge's observation that he was mandated to place little weight on time accrued while an individual's status was precarious for the purposes of section 117B. He did not reconcile those two apparently conflicting statements, and I conclude that he erred in law in not so doing.
34. Bringing these matters together, though I accept that the judge properly observed the neutral factors he referred to at paragraph 33, the evaluation of Article 8 outside the Rules like that in respect of paragraph 276B(1)(vi) is materially flawed.
35. As a consequence there must be a remaking of this decision, limited to the Article 8 issues. There has been no challenge to the judge's findings on

international protection and those findings stand. The remaking of the decision can appropriately be done in the Upper Tribunal.

36. To that extent the appeal is allowed.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date 24th November 2022
Upper Tribunal Judge Allen