



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-004803

First-tier Tribunal No:
HU/53112/2021
IA/08651/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 6th March 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Muhammad Jhanzeb Qureshi
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr A Pipe instructed by M & K Solicitors
For the Respondent: Mr P Lawson, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 17 August 2023

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Pakistan. He arrived in the UK on 10 April 2011 with leave to enter as a Tier 4 Student valid until 21 July 2012. On 19 September 2012 he was granted further leave to remain valid until 6 December 2013. On 4 December 2013, the appellant applied for further leave to remain as a student, but his application was refused by the

respondent on 15 June 2015. The appellant remained in the UK and on 21 August 2020 he applied for leave to remain on family and private life grounds. That application was refused by the respondent on 15 June 2021. The appellant's appeal against that decision was dismissed by First-tier Tribunal ("FtT") Judge Athwal for reasons set out in a decision dated 10 March 2022.

2. The issues in the appeal were set out by Judge Athwal in paragraph [7] of her decision:

- i. Whether the appellant had established that there are insurmountable obstacles to family life continuing outside of the UK.

- ii. Could the Appellant otherwise demonstrate exceptional circumstances justifying a grant of leave to remain in the UK with reference to GEN 3.2. of the Immigration Rules.

- iii. Did the decision to refuse leave amount to a disproportionate breach of the Appellant and his family's rights under Article 8 ECHR."

3. The appellant and his partner, Shireen Kassam ("Mrs Kassam") attended the hearing and gave evidence. The thrust of the appellant's claim was that there are insurmountable obstacles to their family life continuing outside of the UK was twofold. First, Ms Kassam has a number of physical and mental health conditions for which she would not be able to receive adequate treatment in Pakistan. Second, Mrs Kassam's mother, Hasina Kassam ("the appellant's mother-in-law") is heavily dependent on the appellant and Mrs Kassam for her day-to-day needs and the removal of the appellant would have unjustifiably harsh consequences for her.
4. Judge Athwal noted the Tribunal had not been provided with expert medical reports regarding Mrs Kassam's physical or mental condition. Instead, there were letters from various health care professionals and her medical records. The evidence of Mrs Kassam regarding her health and the evidence set out in the letters is set out at paragraphs [40] to [50] of the decision. At paragraphs [50] to [53], the judge said:

- "50. I accept that Mrs Kassam has experienced traumatic events in her life but the medical evidence before me establishes that Mrs Kassam is only being prescribed medication for her diabetes, cholesterol, hypertension and anxiety. She is not under the care of a consultant and receiving other medical treatment for any of her conditions. In relation to her mental health the Appellant (*sic*) is being prescribed anti-depressants. She was told to contact Leicester Counselling Centre in September 2021 but there is no evidence before me that she has and whether she is receiving any treatment.

51. I was told by the Appellant and Mrs Kassam that they had not considered whether the medication Mrs Kassam was receiving would be available in Pakistan. I accept Mrs Mepstead's submission that the medications listed in the medical reports would be available to Mrs Kassam in Pakistan.

52. Mr Vokes submitted that Mrs Kassam would not be able to access appropriate mental health treatment in Pakistan because of limited number

of hospitals and societies attitude towards mental health illness. That may be correct, but before I consider that I must be satisfied that Mrs Kassam is suffering from a serious mental health condition that will require hospital treatment or cause her to behave in such a manner that she will be hidden from society. I have been provided with very limited medical evidence. There is no medical evidence before me that establishes how she exhibits her symptoms or her prognosis. At its highest, the medical evidence states that she suffers from anxiety and that she is treated with Citalopram, which is readily available in Pakistan. It is therefore not clear why she would need hospital treatment in Pakistan. I do not have sufficient evidence about Mrs Kassam's mental health condition to consider whether attitudes towards mental health in Pakistan would negatively impact her.

53. For all of the reasons set out above I am not persuaded by the evidence that there would be insurmountable obstacles to family life continuing in Pakistan because it would entail very serious hardship to Mrs Kassam."

5. The judge went on to consider whether the removal of the appellant would result in unjustifiably harsh consequences for the appellant's mother-in-law. The evidence of Mrs Kassam regarding the care she provides to her mother is set out at paragraph [55] of the decision. At paragraph [56], the judge said:

"I have carefully considered the evidence and I am not satisfied that Article 8(1) is engaged. Even if it was engaged, there was a lengthy period of time when Hasina Kassam was not in contact with the Appellant and Mrs Kassam. During that time she was able to manage without their assistance. There is no evidence before as to why that support could not be put in place again if Mrs Kassam chose to return to Pakistan with the Appellant."

6. The judge referred to the relevant public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and having considered the matters that weigh in favour of and against the appellant, concluded that the decision to refuse leave to remain is proportionate in all the circumstances.

THE GROUNDS OF APPEAL

7. The appellant claims the judge said at paragraph [48] of the decision that Mrs Kassam states she is currently prescribed Naproxen, Citalopram and Metformin but that is not reflected in her medical records at page 92 of the hearing bundle. The medical records the judge refers to are in fact the medical records for the appellant's mother-in-law. Furthermore, it is said that in reaching her decision the judge failed to consider the vulnerability of Mrs Kassam, who has previously been subjected to domestic violence. The appellant also claims the judge erred in concluding that Article 8(1) is not engaged when considering the appellant's family life with his mother-in-law and the judge failed to give adequate reasons for the conclusions reached. Finally, the appellant claims that in conducting the balancing exercise and the factors that weigh in favour of the appellant, the judge failed to consider the totality of the private and family life that has been established by the appellant. The appellant claims the assessment is perfunctory.

8. Permission to appeal was granted by Upper Tribunal Judge Perkins on 4 July 2023. He said:

“1. My main reason for giving permission is that the grounds, I find, make out a strong case that the Decision and Reasons identifies medical evidence wrongly. I may be hard to show that there was a material error but the argument needs to be addressed.

2. I find the other grounds less impressive, particularly when it is remember that the Upper Tribunal is only concerned with material errors but I give permission on all grounds.”

THE HEARING BEFORE ME

9. Mr Pipe submits the respondent accepts the appellant and his partner are in a genuine and subsisting relationship. At paragraphs [20] to [25], the judge summarised the submissions made on behalf of the appellant, noting in particular that Mrs Kassam has previously suffered domestic violence, suffered miscarriages and from issues concerning her mental health. The Judge also referred at [24] to the appellant’s claim that Mrs Kassam is her mother’s main carer and is assisted in that role by the appellant.
10. Mr Pipe submits that at paragraph [40] of her decision the Judge refers to the medical records that were at pages 91 and 92 of the stitched bundle, and states Mrs Kassam suffers from the following ongoing conditions: obesity; hypertension; insulin treated diabetes Type 2 mellitus; angina; hypertensive disease; diabetic retinopathy; musculoskeletal problems. However, the medical records the judge refers to were not the medical records relating to Mrs Kassam but those referring to the appellant’s mother-in-law. He submits the medical records relating to Mrs Kassam were in a supplementary bundle, and in the respondent’s bundle. At paragraph [48] of the decision the judge refers to Mrs Kassam’s evidence that she is currently receiving the following medication: Naproxen; Citalopram; Metformin. The judge states that medication is not recorded in her medical records, but it is clear the judge was looking at the wrong medical records. Mrs Kassam’s medical records, confirm at page 257 of the stitched bundle that she is indeed prescribed the medications she claimed. At paragraph [48], the judge refers to ‘the 14 February medical report’. Mr Pipe submits that appears to be a reference to the updated medical records that were printed off on 14 February 2022 for Mrs Kassam, that were included in the appellant’s supplementary bundle. The records confirm that she was prescribed Citalopram on 19 October 2021 and 10 December 2021.
11. Mr Pipe submits that at page 251 of the stitched bundle there is an entry in the medical records relating to Mrs Kassam of a consultation on 14 April 2020. The entry appears to record that a diagnosis was made by ‘Lets Talk Wellbeing’ of Mrs Kassam having been diagnosed with PTSD after a telephone consultation with a Psychologist. However at paragraph [46], the judge said there is no medical evidence which states that Mrs Kassam has been medically diagnosed with PTSD and is receiving treatment for it. Mr Pipe also drew my attention to a letter from the Leicester General

Hospital, Elective Orthopaedics Department to the appellant's GP dated 23 November 2021 which refers to a discussion about a 'pain management programme' that was unsuitable 'due to her PTSD and her raised anxiety levels'.

12. Mr Pipe submits the confusion regarding Mrs Kassam's medical history and records demonstrates a material error of law in the decision of the FtT. Furthermore, he submits there was also evidence of Mrs Kassam's vulnerability that the judge failed to properly consider. Mr Pipe refers to the evidence that was before the Tribunal (pages 76 to 79 of the stitched bundle) regarding domestic violence that Mrs Kassam had been subjected to previously by her former husband and in the witness statement of the appellant at page 191 of the stitched bundle. Mr Pipe submits that when the decision is read as a whole, the judge failed to adequately consider the evidence before the Tribunal regarding the health of Mrs Kassam and failed to carry out a cumulative assessment of all relevant factors including the wider relationships that the appellant's removal will impact upon.
13. In reply, Mr Lawson submits the judge referred to the evidence before the Tribunal regarding the health of the appellant in various paragraphs of the decision. At paragraph [50], the judge accepted Mrs Kassam has experienced traumatic events in her life, and so the judge was plainly aware of her vulnerability and had regard to that. The judge went on to note the medical evidence before the Tribunal establishes that Mrs Kassam is only being prescribed medication for her diabetes, cholesterol, hypertension and anxiety. She is not under the care of a consultant and receiving other medical treatment for any of her conditions. That, Mr Lawson submits, is correct. The judge noted, at [51], that the appellant and Mrs Kassam accept they had not considered whether the medication Mrs Kassam is receiving would be available in Pakistan. The judge accepted the presenting officer's submission that the medications listed in the medical reports would be available to Mrs Kassam in Pakistan. Mr Lawson submits the appellant's mental health is managed by prescribed medication and that can continue in Pakistan. Mr Lawson submits any error as to whether the medical records referred to at paragraphs [40] and [48] of the decision relate to Mrs Kassam, is therefore immaterial.
14. Finally, Mr Lawson submits that the judge referred at paragraph [56] to Mrs Kassam's relationship with her mother and the appellant's family life with his mother-in-law. The Judge properly went on to consider the Article 8 claim outside the rules having regard to all relevant factors that weigh in favour of and against the appellant.

DECISION

15. I accept that at paragraphs [40] and [48] of the decision, the judge refers to the medical records that are to be found at pages 91 and 92 of the stitched bundle that was before the FtT and those medical records, as Mr Pipe submits, relate to the appellant's mother-in-law. Under s11 Tribunal, Courts and Enforcement Act 2007, the scope of appeal to the Upper Tribunal on an appeal from the FTT only lies on points of law. If there is an error of law then under s12, the Tribunal "may" set aside the decision and

either remit the case or remake the decision. Whether it is appropriate to set aside a decision will clearly depend upon the materiality of the error. The issue I must consider is whether the judge's erroneous reference to the medical records of the appellant's mother-in-law at paragraphs [40] and [48], is material to the outcome of the appeal.

16. The task of the judge was plainly made that much more difficult by the way in which the evidence was presented to the Tribunal. The medical evidence spans, in no particular order, between material in the respondent's bundle, the appellant's bundle and the appellant's supplementary bundle. As the judge noted at paragraph [39], the Tribunal was not provided with any expert report regarding Mrs Kassam's mental or physical health. I accept as Mr Lawson submits that there is reference in paragraphs [41], [42], [43], [45], [46] and [47] of the decision to the evidence set out in the various letters and medical records that were relied upon by the appellant regarding the health of Mrs Kassam. The judge referred, correctly, to that medical evidence and accurately summarised that evidence.
17. At paragraph [48] of her decision, the judge records the medication that Mrs Kassam stated she is currently prescribed (Naproxen, Citalopram and Metformin). Although initially, the judge erroneously referred to the medical records of the appellant's mother-in-law in that paragraph, in the final sentence of that paragraph the judge said; *"The 14 February medical report records that she is prescribed Citalopram, there is no reference to Naproxen or Metformin"*. Mr Pipe accepts the reference to the "14 February medical report" is a reference to Mrs Kassam's most recent medical records that were printed off on 14 February 2022 as referred to in paragraph [47]. Those medical records were at pages 3 to 20 of the appellant's supplementary bundle, and refer to entries made between 1 October 2021 and 14 February 2022. The records confirm Mrs Kassam was prescribed Citalopram on 19 October 2021 and 10 December 2021. As the judge said, there is no reference to any prescription for Naproxen or Metformin during that period.
18. As far as a diagnosis of PTSD is concerned, the judge referred, at [45], to the letter from 'Lets Talk Wellbeing' dated 17 November 2020 which confirms, as the judge said, that Mrs Kassam has been placed on a waiting list for Cognitive Behavioural Therapy sessions. At paragraph [46], the judge said there is no medical evidence before her that states that Mrs Kassam has been medically diagnosed with PTSD and is receiving treatment for it. Mr Pipe refers to an entry in her medical records on 14 April 2020 which he submits, refers to a diagnosis of PTSD by a Psychologist. A careful reading of that record reveals that Mrs Kassam called her GP for a 'back-dated sicknote'. She said she had had spoken to 'Lets Talk Wellbeing' and she stated she had been diagnosed with PTSD by a psychologist after a 60 minute telephone consultation. She also said that she had been advised by the 'Work Occupational Health' to remain off work until her psychological state improves. She was issued with the sick note requested. There was therefore, as the judge quite correctly said, no medical evidence before her that states that Mrs Kassam has been

medically diagnosed with PTSD and is receiving treatment for it. What Mrs Kassam had told her GP was self-reporting and not a medical diagnosis of PTSD.

19. The letter from the Leicester General Hospital, Elective Orthopaedics Department to the appellant's GP dated 23 November 2021 that is referred to by Mr Pipe refers to the appellant having been diagnosed with PTSD following her having witnessed the death of a patient at the hospital (where she worked) during the Covid 19 pandemic. There is, I accept, a vague reference to a diagnosis of PTSD but without any further elaboration as to when that diagnosis was made, how the diagnosis was reached or any prognosis for future recovery. That evidence does not undermine the findings and conclusions reached by the judge.
20. I reject the claim that the judge failed to have regard to the vulnerability of Mrs Kassam. The judge was not required to refer at length to all the evidence before the Tribunal. At paragraph [22] the judge referred to the claim that Mrs Kassam has suffered from domestic violence, as established in the appellant's statement and from the criminal proceedings. At paragraph [50] of her decision, the judge accepted, as Mr Lawson submits, that Mrs Kassam has experienced traumatic events in her life. The judge referred to Mrs Kassam being prescribed anti-depressants and to the advice given to Mrs Kassam to contact Leicester Counselling Centre in September 2021.
21. Finally, at paragraph [56], the judge said she was not satisfied that Article 8(1) is engaged. The consideration of the evidence at paragraphs [53] to [57] was in the context of paragraph GEN.3.2 of Appendix FM and whether the appellant has established that a refusal of leave to remain will result in unjustifiably harsh consequences for either the Appellant, Mrs Kassam or the appellant's mother-in-law. At paragraph [53], the Judge found that the appellant has not established that a refusal of leave to remain will result in unjustifiably harsh consequences for either the appellant or Mrs Kassam.
22. The judge then went on, at [54] and [55] to consider whether the appellant's mother-in-law would be subjected to unjustifiably harsh consequences. The question whether an individual enjoys family life is one of fact and depends on a careful consideration of all the relevant facts of the particular case. The question is highly fact sensitive. In *Kugathas -v- SSHD* [2003] EWCA Civ 31, at [14], Sedley LJ cited with approval, the Commission's observation in *S v United Kingdom* (1984) 40 DR 196: "Generally the protection of family life under Article 8 involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case.". There is no presumption that a person has a family life, and the Tribunal must consider a range of factors that are relevant. Such factors include a consideration of matters such as the family members with whom the individual has lived, identifying who the direct relatives and extended family of the appellant are, the nature of the links between them, the age of the applicants, where and with whom they have resided

in the past, and the forms of contact they have maintained with the other members of the family with whom they claim to have a family life.

23. The judge noted the appellant and Mrs Kassam do not live with the appellant's mother-in-law, and to the evidence before the Tribunal regarding the care and assistance the appellant and Mrs Kassam provide. It is in that context, and focusing upon the relationship between the appellant and his mother-in-law that the judge found that Article 8(1) is not engaged. That was a conclusion that was open to the judge on the evidence before the Tribunal.
24. In any event, the judge went on to consider the Article 8 claim outside the rules. The judge referred, as she was required to, to the relevant public interest considerations set out in s117B of the 2002 Act. The judge properly noted the appellant established his relationship with Mrs Kassam at a time when he was present in the UK unlawfully. She noted the appellant's immigration status was precarious between April 2011 and June 2015. The judge went on to have regard to the factors that weigh in favour of, and against the appellant. I reject the submission made by Mr Pipe that the assessment was perfunctory.
25. The judge had already found that the appellant cannot succeed under the immigration rules. As set out by the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules. The corollary of that is that if the rules are not met, although not determinative, that is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control.
26. In my judgement, the judge identified the issues and gave a proper and adequate explanation for her conclusions. The erroneous reference to the medical records of the appellant's mother-in-law in paragraphs [40] and [48] of the decision are in my judgement immaterial to the outcome of the appeal. There is extensive and accurate reference by the judge to the medical evidence before the Tribunal regarding the health of Mrs Kassam. I am satisfied the outcome of the appeal would have been the same even if the judge had not erroneously referred to the medical records of the appellant's mother-in-law in those paragraphs.
27. On appeal, the focus must be on the way the judge performed the essence of her task. The Upper Tribunal should not overturn a judgment at first instance unless it really cannot understand the original judge's thought process when the judge was making material findings. The remaining findings made by the judge were findings that were properly open to the judge on the evidence before the FtT. Those findings cannot be said to be perverse, irrational or findings that were not supported by the evidence. Having carefully considered the decision of the FtT I am satisfied that the

appeal was dismissed after the judge had carefully considered the facts and circumstances of the appellant and Mrs Kassam in particular.

28. In my judgment, the appellant is unable to establish that there was a material error of law in the decision of the FtT capable of affecting the outcome, and it follows that the appeal is dismissed.

NOTICE OF DECISION

29. The appeal is dismissed.
30. The decision of First-tier Tribunal Judge Athwal stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber
7 February 2024