



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos.: UI-2023-002625
UI-2023-002626
UI-2023-002627

First-tier Tribunal Nos: HU/00077/2023
HU/00078/2023
HU/00079/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

(1) **HS (INDIA)**
(2) **PK (INDIA)**
(3) **GS (INDIA)**
(ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Pinder, Counsel instructed by Addison & Khan Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Heard at Field House on 1 February 2024

Order Regarding Anonymity

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Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellants have been granted permission to appeal against the decision of Judge Black promulgated on 11 May 2023 (“the Decision”). By the Decision, Judge Black dismissed their appeals against the decision of the respondent made on 28 December 2022 to refuse the application of the first appellant for leave to remain on private life grounds under Rule 276ADE or, in the alternative, on the ground that the refusal of leave would have unjustifiably harsh consequences for him and/or for his wife and child, who joined in his appeal as his dependants.

Relevant Background

2. The appellants are nationals of India. The second appellant is the wife of the first appellant, and the third appellant is their child. As the first appellant is the main appellant in this appeal, I shall hereafter refer to him simply as ‘the appellant’, save where the context otherwise requires.
3. In his application for leave to remain on private life grounds, which he made in December 2021 after his application on Article 3 ECHR grounds was refused on 8 November 2021, the appellant relied on a report from a psychologist, Dr Kaur.
4. In his first report dated 6 April 2021 Dr Kaur diagnosed the appellant as suffering from severe depression and severe psychosis, including hallucinations and symptoms of paranoid schizophrenia.
5. In the covering letter that was sent with the private life application, it was submitted that the appellant’s Article 8 rights to mental well-being would be breached if he were removed to India without the drugs that he needed to prevent a relapse of a severe mental health condition. If he were removed, he might not get proper medical treatment, and this could pose a danger to himself and to others.
6. In his second report dated 27 October 2022, Dr Kaur provided an updated assessment. The severity of the appellant’s condition was moderate to high. He was a vulnerable adult who needed ongoing support in the form of psychological intervention. He was currently on Sertraline medication of 150mg per day, as set out in the attached GP summary. His treatment also comprised ongoing psychoeducation support and CBT sessions.

7. Under the heading of “Long and short-term Prognosis”, Dr Kaur said that HS needed ongoing support CTB therapy sessions for the next 6-7 weeks at a rate of one session per week. He was finding it challenging to seek support, but with psychoeducation and CBT sessions he was making the required progress. HS was not in his view fit to travel because of his mental health condition. He was a very vulnerable person and there would be higher chances of self-harm or suicidal ideation. He required more time to improve his mental health through psychological intervention support. The approximate time for completing this intervention support was 5-6 months, depending on cooperation from the patient.
8. In the RFRL dated 28 December 2022, it was noted that the appellant had withdrawn on 7 May 2021 his asylum claim made on 29 January 2019, and that he had decided not to lodge an appeal against the refusal of his human rights claim under Article 3 ECHR.
9. He claimed to suffer from severe depression and severe psychosis, including hallucinations and symptoms of paranoid schizophrenia. However, it was not accepted that he had established that his claimed condition reached the minimum level of severity to engage Article 3 ECHR.
10. Furthermore, the psychological reports submitted by Dr Kaur were wholly written on what he had told the expert. There was little to nothing in the way of external contribution from his doctor, or an NHS consultant. Further to this, he had not evidenced that his medical treatment was wholly dependent upon his residency in the UK. India had a functioning healthcare system, which was capable of assisting him. He was not in the final stages of a terminal illness, and he had not shown that he would be unable to continue to access treatment for his condition in his home country.
11. It was noted from the psychological report the he was unable to undertake long-haul travel owing to his medical conditions. However, sufficient safeguards could be arranged to mitigate any potential risk during his return to India. This could include ensuring that he had suitable medication pre-departure and post-departure, or providing a medically-trained professional to accompany him. Furthermore, the Assisted Voluntary Return Scheme might be able to provide financial assistance to ease his integration into his home country.
12. The appellant’s case on appeal was set out in an ASA settled by his solicitors. They advanced three reasons why the appellant would face very significant difficulties on return to India. The first was that the appellant’s life was in danger in India. The second was that the appellant and his dependants would not be able to financially support themselves in India, as they no longer had any connections there. The third was that, as the appellant had not been to India for the last 11 years, it would not be possible for him to integrate into Indian society and culture, *“especially with his deteriorating mental health”*.

13. The day before the hearing, the appellant's solicitors uploaded to the CCD file an additional bundle of documents which contained an update from the appellant's GP dated 1 May 2023. The GP said that soon after his arrival in the UK 13 years ago, HS was diagnosed with paranoid schizophrenia and severe depression. His mental health had been seriously at risk. He was a vulnerable adult. He understood that HS had some immigration issues, and that his case was in Court for a hearing. As he was a medical practitioner responsible for a vulnerable person, it was his duty to highlight his health condition to the Court. In his opinion, HS was in no condition to leave the UK under current circumstances.
14. He went on to give a summary of the appellant's medical history, as recorded on the practice's computer system, in reverse chronological order. On 5 January 2023 there had been a Depression Medical review. The next entry (in reverse chronological order) was for 14 September 2021, when there was a telephone call to the patient following a request for medication made on 6 September 2021.
15. Under the heading of "Significant Past", the GP recorded various diagnoses made on 6 April 2021, all of which correspond to the diagnoses made by Dr Kaur on 6 April 2021 with the exception of Dr Kaur's diagnosis of symptoms of paranoid schizophrenia, of which the GP made no mention. The GP recorded that all the problems diagnosed on 6 April 2021 (mental and behavioural disorder due to hallucinogens, psychotic disorder and severe depression) had "ended" on 29 June 2021.

The Hearing Before, and the Decision of, the First-Tier Tribunal

16. The appeal hearing took place remotely at Hatton Cross on 2 May 2023. Both parties were legally represented, with Ms Price of Counsel appearing on behalf of the appellants. It was agreed that the assessment should include the couple's second child, and hence the Decision refers to the appellant's children, rather than to GS exclusively.
17. In the Decision at para [7], the Judge noted that the appellant had mental health problems and relied on two reports from a psychologist in which reference was made to a diagnosis of depression with symptoms of schizophrenia and hallucinations. He had produced GP records and a letter stating that he was unfit to travel. The psychologist's report stated that the appellant required a treatment period of 5-6 months, including some 6-9 weeks of CBT and medication to enable his recovery.
18. At para [11], the Judge said that at the start of the hearing she made a direction that the appellant was to be treated as a vulnerable witness in accordance with the Presidential Guidance.
19. At para [14], the Judge addressed the medical evidence. She said that Mr Iqbal, Counsel for the respondent, had raised no challenge to the diagnosis purportedly made by the Psychologist, but had submitted that the GP

letter was unreliable insofar as there were no reasons given for why the appellant was unable to travel. The Judge said that she proceeded on the basis that the appellant had a serious depressive illness for which he was prescribed Sertraline, an anti-depressant, and attended for CBT. It was unclear who and when any formal diagnosis was made. The Psychologist referred to the fact that the appellant sought limited help from the NHS, preferring to seek private assistance, and to that extent there was little evidence. She found that the GP report was inaccurate as it referred to a diagnosis made after his entry to the UK, when it was clear that the diagnosis was made very recently in 2021. She said that she placed little weight on the GP letter, given that the appellant had not sought NHS help and because of the inaccuracy which made the letter unreliable - in addition to which, neither the GP nor the Psychologist provided any reasons for why the appellant was unable to travel to India. She found that the appellant was fit to travel to India.

20. At para [15] the Judge said that, looking at the evidence in the round, she was not satisfied that the appellant had shown that there were very significant obstacles to his reintegration into India. His wife was a citizen of India and entered the UK in 2019. Given her length of residence in India, she found that his wife would be able to resume her life there without great difficulty. The children were very young, and their best interests lay in remaining with their parents as a family unit. There was no reliable evidence to support a claim that the children would suffer any negative impact in the event of relocating to India, given their young age. The Judge continued:

“The appellant would be able to seek medical treatment and medication in India. It was not argued that the appellant would not be able to access any treatment in India. His condition was considered to be a short-term condition by the psychologist.”

21. At para [16], the Judge said that the appellant’s fears on return - his family having allegedly disowned him - had not been established or demonstrated in evidence. The appellant had made a claim for asylum, and that was withdrawn. She was satisfied that he could reintegrate in India, together with the assistance of his wife who had recent experience of living in India with family members.
22. At para [17], the Judge found that there would be no interference in the appellant’s private life, as he would be able to obtain medical assistance in India and establish connections, and he would be able to develop his relationship with his wife and children in India, where he could seek employment.

The Grounds of Appeal

23. The grounds of appeal to the Upper Tribunal were settled by Ms Pinder. Ground 1 was that the Judge had failed to take relevant matters and medical evidence into account. Ground 2 was that the Judge had made

equivocal findings amounting to material errors of law. Ground 3 was that the Judge had been irrational to discount the letter from the GP dated 1 May 2023 for the reasons which she gave. It was also perverse, she submitted, for the Judge to find that the appellant's condition was considered to be a short-term condition by the Psychologist, when the Psychologist's prognosis was entirely dependent upon the appellant's cooperation, which the Psychologist recorded had been challenging for the appellant.

The Reasons for the Grant of Permission to Appeal

24. On 13 June 2023 First-tier Tribunal Judge Thapar granted permission as in her view the grounds raised an arguable error of law in that it was unclear whether the Judge had considered the impact of the main appellant's mental health diagnosis upon his ability to reintegrate upon return to India.

The Hearing in the Upper Tribunal

25. At the hearing before me to determine whether an error of law was made out, Ms Pinder developed the grounds of appeal. After I had reviewed with her the contents of the report of the Psychologist in October 2022, and pointed out that there had then been a 6-month gap before the hearing in May 2023, Ms Pinder acknowledged that she was in difficulties in maintaining the error of law challenge to the Judge's finding on the question of the appellant's asserted unfitness to travel. But she maintained that the Judge had not engaged with the diagnosis of paranoid schizophrenia which was a life-long condition. She had not adequately addressed the impact of the diagnosis of paranoid schizophrenia upon the appellant's ability to reintegrate upon return to India.

26. On behalf of the respondent, Mr Walker, who attended the hearing remotely via Teams, said that he agreed that the Judge had erred in the respect put forward by Ms Pinder, as he agreed that paranoid schizophrenia was a life-long condition.

27. After hearing from the representatives as to future disposal if I was satisfied that a material error of law was made out, I reserved my decision.

Discussion and Conclusions

28. The stance taken by Mr Walker is not determinative of the issue before me, and for the reasons which I give below, I do not accept his concession.

29. In the light of the case put forward by Ms Pinder, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

“36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration...Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

30. As stated in the above guidance, the degree of particularity required depends entirely on the nature of the issues falling for decision. On analysis, the grounds of appeal are an attempt to re-argue the case on fitness for travel and reintegration on a basis that is much more sophisticated and nuanced, with case law being cited that was not cited below. But the adequacy of the Judge’s reasoning is not to be judged by how well or how badly it addresses the case put forward by Ms Pinder in the grounds of appeal, but whether the Judge adequately addressed the rudimentary case on these two issues that was advanced at the hearing in the First-tier Tribunal.
31. Firstly, despite it not being disputed that the appellant’s medical condition was not of sufficient severity as to engage Article 3 ECHR, it was submitted that the appellant was unfit to fly back to India. Secondly, it was submitted that the appellant would find it very difficult to reintegrate into India after an 11-year period of absence “*especially given his deteriorating mental health condition.*”
32. As to the first issue, although Dr Kaur had explained why he was of the view that the appellant was unfit to travel, this explanation was given in October 2022, and it was given in the context of Dr Kaur envisaging that the appellant would continue to improve. In the RFRL, the respondent had pointed out that arrangements could be made to ensure that the appellant was fit to travel, through the provision of appropriate medication and, if necessary, through the appellant being accompanied by a medical professional. In response to this, the appellant had not produced a further report from Dr Kaur rebutting this, or explaining why this was not a reasonable solution. Instead, the appellant simply provided a letter from his GP in which the GP asserted that the appellant was unfit to travel, but without explaining why this was the case as of May 2023. It was not perverse of the Judge to reject the opinion of the GP. It was open to the Judge to reject the GP’s opinion, both because it was not adequately

explained, and because the GP made a clear error about the appellant's medical history, which called into question his reliability.

33. As to the second issue, the case put forward in the ASA was misconceived, as the appellant's condition was not deteriorating according to Dr Kaur. On the contrary, as I explored with Ms Pinder in oral argument, Dr Kaur said in his second report that the appellant's condition was improving, and he envisaged that there would be further improvement in the coming months.
34. But of greater materiality is that the appellant had no answer to the case put forward in the RFRL which was that the appellant could access adequate medical treatment in India to manage his ill-health. The appellant did not put in expert evidence or country background evidence to challenge this, and so the argument that the appellant's mental ill-health would be a barrier to reintegration fell away.
35. Dr Kaur did not diagnose the appellant as suffering from a life-long condition of paranoid schizophrenia. Dr Kaur diagnosed the appellant as suffering from symptoms of paranoid schizophrenia in April 2021, and he did not repeat this diagnosis in October 2022. Moreover, so far as the GP records were concerned, the problems of severe depression and severe psychosis diagnosed on 6 April 2021 had ended on 29 June 2021. This is consistent with the line taken in the application for leave to remain made in December 2021 which was that there was a risk of a relapse in the appellant's severe mental health condition if he was removed to a country where he could not access the medication and treatment that he was receiving in the UK. So, the clear implication of the case put forward in December 2021 was that the appellant's condition had stabilised. The appellant did not provide by way of appeal updated medical evidence to show that he had suffered a relapse. On the contrary, as previously noted, he continued to rely on Dr Kaur's second report which confirmed that his condition had improved, and in which he envisaged a further improvement in the next 5-6 months. Far from being perverse, the judge's findings of fact in para [15] of the Decision were fully sustained by the evidence.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
8 February 2024

