



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

Case No: UI-2023-004735  
First -tier-number: HU/55860/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 17<sup>th</sup> of January 2024

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**PA (Pakistan)**  
**(anonymity order made)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms A Hashmi, Counsel instructed by Direct Access  
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**Heard at Phoenix House (Bradford) on 10 January 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 him. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan born on the 13<sup>th</sup> August 1973. He appeals with permission against the decision of the First-tier Tribunal (Judge R. Caswell) to dismiss his appeal on human rights grounds.
2. The substance of the Appellant's case before the First-tier Tribunal was that he has lived illegally in the United Kingdom for about 17 years. He came here as a visitor, and overstayed his visa. He has made good friends here and has a network of people who support him. Conversely his ties to Pakistan have diminished. Both his parents have, sadly, died and he no longer has any contact with other family members there. The Appellant further asserts that he has been suffering from poor mental health. He has been diagnosed with depression and has had feelings of wishing to harm himself. He submitted that there were, on these facts, very significant obstacles to his integration in Pakistan such that leave should be granted pursuant to what then was paragraph 276ADE(1)(vi) of the Rules, and/or that the refusal to permit him to now remain in the UK lawfully would be a disproportionate interference with his Article 8 rights. He further submitted that there was a real risk that return to Pakistan would result in a violation of Article 3, on the basis that there was a risk that he would kill himself should he be returned there.
3. The First-tier Tribunal did not accept that there were very significant obstacles to the Appellant's integration in Pakistan. He speaks fluent Urdu and had lived there until he was 33 years old. He was familiar with the culture. Although his parents had died he be able to form new networks of support by making friends and contacting extended family. Judge Caswell attached no weight to a report by a Psychiatrist based in Pakistan: Dr Babur had apparently diagnosed the Appellant after a consultation via Whatsapp and had based his entire report on what the Appellant had told him. A second report had been provided, from a psychiatrist in the UK who had referred to the correct diagnostic criteria. Dr Chisty had however only had one consultation with the Appellant and had not had access to all of his medical records. Judge Caswell found no evidence to support the suggestion that the Appellant would self-harm or seek to kill himself should he be removed to Pakistan. There was nothing in the GP notes to indicate that the Appellant had suffered from mental health problems prior to October 2022. The friends who support him here could continue to do so if he were removed. In all the circumstances she found the decision to refuse leave to be lawful and proportionate.
4. The Appellant appealed on the grounds that in reaching her decision Judge Caswell erred in the following manner:
  - i) She had "overestimated" his ties to Pakistan. The Appellant asserts that he does not have friends or family there;
  - ii) She had failed to have proper regard to the medical evidence;
  - iii) There were mistakes of fact in the decision: Dr Chisty did have access to the Appellant's GP records, contrary to the finding of Judge Caswell; Dr Babur was not based solely in Pakistan, he also had a clinic in Essex;
  - iv) Her conclusion that friends in the UK would support him had no evidential foundation.

5. Permission was granted to appeal to this Tribunal on the 28<sup>th</sup> September 2023 by First-tier Tribunal Judge O'Garro, who noted that the grounds had been drafted by the Appellant himself. She considered the grounds to be a challenge to the rationality of Judge Caswell's decision and found that to be arguable.
6. On the morning of the hearing I learned that the hitherto unrepresented Appellant had now instructed Counsel by direct access. Unfortunately Ms Hashmi was only instructed that morning and was in Manchester, so arrangements were made to hear her submissions via Teams. The Appellant did not attend the hearing. I heard submissions from Ms Hashmi and Mr Diwnycz and I reserved my decision.

### **Error of Law: Discussion and Findings**

7. The history of the appeal thus far is somewhat murky. Ms Hashmi helpfully informed me that she had some previous dealings with the Appellant's case, as in December 2022 she had successfully applied, before Judge Hatton, for the oral hearing to be adjourned because the Appellant was, in her estimation, obviously mentally unwell and she considered it necessary to obtain private medical care. It is not entirely clear from the UT records what then happened, and in particular how it was that by the time Judge Caswell came to deal with it in August 2023 it had become a paper case. At that hearing in December Ms Hashmi had been instructed by Abbott Solicitors, and I am not told when they came off record. The grounds of appeal purport to have been drafted by the Appellant himself, but since they are in English and are couched in ostensibly legal terms, I have to assume that he received some assistance with these (the Appellant had requested an interpreter in Urdu for this hearing who was in the end discharged without being used because the Appellant did not attend). Ms Hashmi was without instructions about that. Given that history it is perhaps unsurprising that myself, Ms Hashmi and Mr Diwnycz all had different bundles and it was not immediately clear to any of us what Judge Caswell had before her, or how she came to be in the unenviable position of having to determine an Article 3 health case on the papers. This took some unravelling, so that I was unable to give a decision at the hearing. I have however now been able to access what was before the First-tier Tribunal.
8. Ms Hashmi's made lengthy submissions about the medical evidence which in the end came down to this: that Judge Caswell's analysis of the risk that the Appellant could take his own life, or otherwise suffer inhuman and degrading treatment upon return to Pakistan, was flawed for mistake of fact, and a failure to take all of the relevant material into account.
9. The medical evidence before Judge Caswell consisted of four strands of evidence.
10. There was an undated report from a Dr Babur, a Consultant Psychiatrist apparently operating his own private clinics in the UK and Pakistan. Of this report Judge Caswell said this:

"The first was obtained from a psychiatrist in Pakistan, who consulted with the Appellant by WhatsApp. It is not well expressed in English, and does not include the usual diagnostic criteria. It

does not reference the Appellant's GP notes adequately. Although Dr Babur states that the Appellant has tried to commit suicide, this appears to be based solely on what the Appellant told the doctor. There is no objective confirmation of this in the medical notes or in the statements from the Appellant's friends".

11. I am unable to say that any of the reasons Judge Caswell gives for declining to attach weight to this report were unreasonable. Although it is correct to say that Dr Babur operates in both the UK and Pakistan, it would seem that Judge Caswell assumed him to have been in Pakistan at the date of the consultation because that is what is recorded in the Appellant's GP's notes at page 270 of the bundle. In any event the doctor confirms that the consultation took place over Whatsapp. It is not well expressed in English. There is no reference to the relevant diagnostic criteria. It does not state that Dr Babur had access to the Appellant's GP records, and Ms Hashmi has not been instructed that he did. The comment that the opinion appears to be based solely on what Dr Babur was told by the Appellant is a fair one: he prefaces a paragraph setting out the Appellant's complaints with the words "As he told...". Ms Hashmi invited me to infer that the Appellant's medical records must have been available to Dr Babur. I am unable to do that, because there is absolutely nothing on the face of the report to justify such an inference. Judge Caswell was entitled to have attached little weight to this report.
12. The second report was prepared by Dr Chisty, also a Consultant Psychiatrist. Dr Chisty interviewed the Appellant on one occasion, online. He does not say how long the interview took. He records a personal history of the Appellant prior to his arrival in the UK which appears to indicate that he was unwell before he ever left Pakistan: the Appellant said he could not consider marriage because of his poor mental health and that both of his parents had suffered from depression. As to his state of health since his arrival Dr Chisty says this:

"6.3 His GP notes show an entry on 05 05 23 that his immigration status was still unstable- had been due to be in court last week but postponed and no new date yet. Has been Feeling suicidal, has previous tried to commit suicide- found by friends in Sheffield. Unclear about whether would try again, ongoing voices.

6.4 Review of his medical records show several entries about anti-depressant and sleeping tablet prescriptions".
13. Dr Chisty records the Appellant's evidence that after finding himself homeless after he overstayed his visit visa in 2006 the Appellant settled and managed to find friends and a support network. It was during the Covid lockdown that his mental health deteriorated again. At the date of the report the Appellant was being prescribed two anti-depressants and a sleeping tablet. Dr Chisty also records that his GP had referred him for counselling. Dr Chisty considers that the Appellant meets the diagnostic criteria for 'Recurrent Depressive Disorder without psychotic symptoms as a consequence of the relevant incident' and 'a Specific Phobia as a consequence of the relevant incident'. In respect of this latter diagnosis, Dr Chisty does not elaborate on what the phobia might be, nor does he refer further to "the relevant incident". He notes the support given to the Appellant by his friends in the UK and says this:

“10.8 In my opinion, separation from his company of friends in the UK even short term would have significant impact on his health leading to risk of his life”.

14. Judge Caswell’s findings on this report are recorded at her paragraph 21 as follows:

“...The second report from Dr Chishty is better expressed and does apply appropriate diagnostic criteria. However, it is based on one consultation with the Appellant and, again, the doctor does not appear to have had access to all the Appellant’s medical notes”.

15. Importantly she goes on:

“22. The GP notes which I do have appear to start in October 2022, when the Appellant reported he was feeling depressed and low in mood, and was prescribed anti depressants. This has been said at various times to have related to his becoming very lonely and isolated in lockdown. Since then, life has become much more normal, and there is evidence before me that the Appellant has social contact with his friends. There is no evidence before me in the medical notes to support the claim that the Appellant has self-harmed or attempted suicide. In fact, the October 2022 entry in the medical notes specifically excludes these, and states that the Appellant presented normally (in the sense of being well dressed, washed and maintaining normal eye contact)”.

16. That passage brings me to the third and fourth strands of evidence, the Appellant’s GP records, and various items of correspondence from mental health agencies. In these documents two items are of particular relevance for the purpose of this appeal. Ms Hashmi points me to an entry in the Appellant’s GP notes from the 5<sup>th</sup> May 2023 which Dr Chisty refers to (set out above at my paragraph 12). This confirms that there was a mention of suicide and self harm in the GP medical records. The second is a letter from a Siobhan Ross-Gardner, a Psychological Wellbeing Practitioner working for Sheffield Health and Social Care. This letter is dated the 21<sup>st</sup> December 2022 and refers to her and the Appellant having had a consultation in which they agreed to “create a safety plan” for the Appellant to refer to should he experience thoughts that he would be “better off dead”.

17. I deal first with the criticism made of Judge Caswell’s treatment of Dr Chisty’s report. That is that she found that he did not have access to the Appellant’s GP records, when his reference to the May 2023 entry shows that in fact he did. This is however a misreading of what Judge Caswell said. What she actually said was “the doctor does not appear to have had access to *all* the Appellant’s medical notes” (my emphasis). Here Judge Caswell was presumably thinking about the October 2022 entry, which discounted concerns about suicide, but possibly also the preceding sixteen years.

18. That leads to this, in my view the only ground of appeal with any arguable merit. Judge Caswell says at her paragraph 22 that “there is no evidence before me in the medical notes to support the claim that the Appellant has self-harmed or attempted suicide”. Ms Hashmi points to the GP notes of May 2023 and the

letter from Siobhan Ross-Gardner to say that this was demonstrably wrong. She further points out that it was said that the Appellant had in fact attempted suicide whilst living alone in Sheffield, but had been found by friends.

19. Whilst this is at first blush a good ground, it becomes important to understand what was actually before the Judge. The Respondent's bundle for the First-tier Tribunal contained letters from two friends of the Appellant. Mr Qamar Zaman provided a statement dated the 24<sup>th</sup> June 2021 which referred to the Appellant having poor mental health but nothing more specific than that. A letter from Mr Muhammad Ameer, undated, appeared in the same bundle in similar terms. Letters from Abbott Solicitors made unevidenced assertions about how vulnerable and how ill the Appellant was. The Respondent further relied upon a September 2020 CPIN on the availability of healthcare in Pakistan. For the Appellant there were further letters from friends. Mr Zaman wrote a second statement, this one dated 3<sup>rd</sup> November 2022, in which he repeated his concerns about his friend's vulnerability. Mr Zahoor Ahmed's statement, also dated the 3<sup>rd</sup> November, is couched in near identical terms. Notably neither of these statements make any reference to the Appellant feeling suicidal. Nor does the Appellant's witness statement of the same date. The only medical notes in that bundle are GP notes dated the 28<sup>th</sup> October 2022 which record that the patient had reported feeling depressed for 4-5 weeks. The doctor recorded "no suicidal or any self harm thoughts. No plans". This of course was the note referred to by Judge Caswell.
20. An additional bundle was apparently supplied shortly before the appeal was listed before Judge Caswell. This contained the reports from Dr Babur and Dr Chisty, various NHS appointment letters about physical issues and the short letter from Siobhan Ross-Gardner. A witness statement from the Appellant dated 16<sup>th</sup> December 2022 was included which refers to him experiencing panic attacks but says nothing about any suicide attempt. I am told by Ms Hashmi that in a hearing listed prior to the matter coming before Judge Caswell on the papers the Appellant was accompanied to court by his two friends Mr Zaman and Mr Ahmed but I could find nothing from either of them, nor indeed anyone else, about having found the Appellant in his flat after a suicide attempt. There is no medical evidence relating to that incident. Notably, the May 2023 doctors notes which record the attempt - or more accurately the Appellant's reporting of it - are not in that additional bundle. Whilst I cannot rule out the possibility that these notes were provided to Judge Caswell, on the FTT electronic file as it appears at present, I cannot be satisfied that this was in fact the case. It follows that the Judge did not err in fact when she said that there was "no evidence before me in the medical notes" to support the claim of attempted suicide.
21. We are therefore left with this. The Article 3 case hinged on the Appellant presenting a real risk of suicide and/or a serious and irreversible decline in his mental health should he be returned to Pakistan. The primary evidence of this - that he had survived an attempt on his own life whilst living in Sheffield - is completely unevidenced. There is nothing from the friends who allegedly found him. There is no contemporaneous medical evidence. There is not even anything from the Appellant himself. The GP note, which then finds its way into Dr Chisty's report, was not before the Judge and in any event was based on self reporting. A Psychological Wellbeing Practitioner was moved to create a "safety plan" for the Appellant in December 2022 but we know no more about this than the consultation followed a referral from the GP, who quite properly acted on what he was being told about the Appellant feeling depressed. Having regard to all of

that I am unable to accept that Judge Caswell's approach to the evidence was flawed, or that her decision was in any way irrational.

22. There remains the issues arising under Article 8. The grounds submit that Judge Caswell "over-estimated" the extent of his ties in Pakistan but do not explain why. The Appellant was 33 years old when he left Pakistan. He then lived illegally in this country for 17 years and in that time managed to provide for himself, renting in the private sector and establishing a network of friends and supporters. Judge Caswell was quite entitled to infer from this success that he would be able to make friends and work in Pakistan. He speaks fluent Urdu and is obviously familiar with the culture. The only arguable obstacle to his integration was his poor mental health, which on the evidence before Judge Caswell amounted to him suffering from long term depression which sadly worsened during lockdown. He is being treated with medications which are freely available in Pakistan. As Ms Hashmi conceded before me, the 'very significant obstacle' case really stands and falls with the Article 3 grounds, which for the reasons I give above are not made out. In respect of the Article 8 case 'outside of the rules' the Appellant has of course lived here unlawfully for almost the entire time he has been here. All of his relationships have been established during that time and therefore, by operation of s117B Nationality, Immigration and Asylum Act 2002, attract little weight. It is in my view *possible* that a strong mental health claim coupled with 17 years of long residence were certainly capable of outweighing the public interest in refusing leave, but here that case was not made out.

### **Decisions**

23. The appeal is dismissed.
24. Although I was not asked to make an order for anonymity, Ms Hashmi did ask that in any remaking the Appellant be treated as a vulnerable witness on the basis of the uncontested diagnosis of depression. I am prepared to treat that application as including an application for an order for anonymity, which in any event I consider to be warranted on the basis of the medical evidence. An order is therefore made.

Upper Tribunal Judge Bruce  
Immigration and Asylum Chamber  
10<sup>th</sup> January 2024

