



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

Case No: UI-2024-000670

First-tier Tribunal No: HU/51168/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 13<sup>th</sup> of June 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**Muhammad ZUBAIR**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Duffy of Counsel instructed by Farani Taylor Solicitors.  
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 9 April 2024**

**DECISION AND REASONS**

1. There is no merit in the challenge to the decision of First-tier Tribunal Judge Dixon dated 17 January 2024 dismissing the Appellant's appeal on human rights grounds.
2. Permission to appeal was granted on 27 February 2024 on both grounds pleaded in the Grounds of Appeal. Both grounds relate to the Appellant's mental health.
3. As Mr Duffy was bound to do, it was acknowledged that Ground 2 was fundamentally misconceived. The Grounds plead that the First-tier Tribunal Judge had inappropriately offered "*his own speculation as to the*

*outcome of removal for the Appellant's mental health", and then went on to cite lines from paragraph 12 of the decision in support of the submission. Those lines include, crucially to the pleading, - "Quite clearly, his depressive symptoms are related to his current immigration situation as he does not report any other contributing stressors in his life. The issues are thus linked to his lack of immigration status and his being in limbo."*

4. It is unfortunate that the Decision of the First-tier Tribunal has not been drafted with more care in respect of setting out quotations from the psychiatric report of Dr Anees Ul-Haq Syed. The words complained of in the Grounds, as cited above - "*Quite clearly... [etc.]*" - appear in paragraph 12 of the Decision immediately after an italicised quotation from the psychiatric report. As such, on first reading the words do indeed appear to be the words of the Judge rather than the words of the psychiatrist. However, they are in fact the latter: the words are actually a continuation of the quotation from paragraph 20.11 of the report. Whilst it is understandable that the author of the Grounds of Appeal may have been 'wrongfooted', the reality is that the passage is not the Judge offering his own speculation, but the Judge quoting the expert report.
5. In all such circumstances it was open to the Judge, for the reasons further explained at paragraph 12, to conclude that even an unfavourable outcome would "*constitute a form of resolution as [the Appellant] would know where he stands*" such that his mental health problems would likely ease over time.
6. The Judge gave further reasons at paragraph 12 for attaching little weight to the opinion of Dr Syed. In the context of the challenge under Ground 2 this included, specifically, that the report lacked any consideration to the impact on the Appellant's mental health of his 'limbo' coming to an end. At paragraph 13 the Judge also noted that the report "*is dated 1 September 2021 and is therefore now very significantly out of date. I therefore attach limited weight to that expert report*". Both of these reasons are entirely sustainable and are not impugned in the grounds of challenge.
7. Further, and in any event, the Judge also went on to consider the position in the event that he was wrong about the Appellant's mental health not being materially impacted by return to Pakistan. At paragraph 15 the Judge observed that there was "*no clearly reasoned indication as to what the extent of the impact would be*", and that the Appellant had not established that he would not have access to the support he had been getting in the UK - rejecting in particular the notion that the uncle who had paid for counselling and supported the Appellant financially in other ways in the UK would not be able similarly to finance counselling in Pakistan.

This 'reasoning in the alternative' is not the subject of challenge in the Grounds.

8. In the circumstance of the 'reasoning in the alternative', the one further aspect of the Judge's reasoning that is the subject of challenge under Ground 1 cannot be material even if the substance of Ground 1 were established. Be that as it may, for the reasons that follow, in my judgement the substance of Ground 1 is not established.

9. In addition to noting that the psychiatric report did not address the impact on the Appellant's mental health of the uncertainty of his immigration status coming to an end, and that the report was significantly out of date, the Judge also identified as a reason for attaching little weight to the report the following:

*"As the expert himself noted at paragraph 21.1 he did not have access to the most recent GP records. Indeed, I note that in the sources for the report, cited at paragraph 3, the appellant's GP records do not appear. This is a significant limitation in light of the Upper Tribunal's observations in HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC), headnote 4 and 5." (paragraph 12)*

10. Ground 1 pleads *"This is a misunderstanding of what HA actually says"*. Paragraph (5) of the headnote in **HA** is then set out, after which it is argued that the Judge does not identify where the psychiatric report and the Appellant's GP records differ.

11. Paragraphs (3)-(5) of the headnote in **HA** are in these terms:

*"(3) It is trite that a psychiatrist possesses expertise that a general practitioner may not have. A psychiatrist may well be in a position to diagnose a variety of mental illnesses, including PTSD, following face-to-face consultation with the individual concerned. In the case of human rights and protection appeals, however, it would be naïve to discount the possibility that an individual facing removal from the United Kingdom might wish to fabricate or exaggerate symptoms of mental illness, in order to defeat the respondent's attempts at removal. A meeting between a psychiatrist, who is to be an expert witness, and the individual who is appealing an adverse decision of the respondent in the immigration field will necessarily be directly concerned with the individual's attempt to remain in the United Kingdom on human rights grounds.*

*(4) Notwithstanding their limitations, the GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal.*

*(5) Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. Where the expert's opinion differs from (or might appear, to a layperson, to differ from) the GP records, the expert will be expected to say so in the report, as part of their obligations as an expert witness. The Tribunal is unlikely to be satisfied by a report which merely attempts to brush aside the GP records."*

12. The Appellant's challenge under Ground 1, as pleaded and as amplified in the oral submissions of Mr Duffy, focuses on subparagraph (5). What is said in substance is that this was not a case where the psychiatrist was 'brushing aside' anything that might have been in the GP records, and as such it did not matter that up-to-date records were not available to him. Because there was a consistency between the GP records and the report, the Judge was in error in attaching little weight to the report.
13. I do not accept that submission. Subparagraph (3) of the headnote in **HA** offers an explanation as to why it is important that a psychiatrist who is not otherwise treating an applicant or appellant should have regard to GP records - the value of which are explained at subparagraph (4). The expectation that the GP records will be engaged with, and that such engagement will be demonstrated in any expert report produced, is articulated in the first part of subparagraph (5). That is the expectation irrespective of any difference of opinion that may exist. The second part of subparagraph (5) posits an additional expectation in circumstances where a difference of opinion emerges.
14. As such the premise of Ground 1 - that the Judge misunderstood the meaning of **HA** - is not made out. The Judge was entitled to consider that the failure to have regard to up-to-date GP records undermined the weight to be attached to the psychiatric report notwithstanding that it might be said that such records were essentially consistent with the report.
15. For completeness I pause to note in this regard that Dr Syed's report, dated 1 September 2021, was based on a consultation conducted on 26 August 2021 by way of a 'Zoom' call. The report lists the source materials available to the expert (section 3) which include some medical documents in particular from in or about August 2019. Further comment is made on

these documents at section 18 under the heading 'Review of Resources'. There does not appear to be anything from the Appellant's GP or from Adult Mental Health services after October 2019. At section 21 under the heading 'Limitations' the expert wrote "*I did not have access to his most recent GP summary*".

16. For the reasons explained, I am satisfied that the First-tier Tribunal Judge gave adequate and sustainable reasons, clearly expressed, for finding that little weight should be attached to the psychiatric report. I do not accept that he fell into any error of law, either generally, or with particular reference to the application of the guidance in **HA**.
17. Further and in any event, as explained above, the Judge went on to give clear and adequate reasons as to why, if he were wrong in respect of his evaluation of the Appellant's mental health, the Appellant had not demonstrated that he would be unable to access professional counselling to meet his needs in Pakistan. In this context, as Mr Melvin highlighted in his submissions, the Appellant's Skeleton Argument before the First-tier Tribunal did not mention the psychiatric report at all, and in the context of 'exceptional circumstances' placed emphasis on the fact that the Appellant was receiving ongoing counselling and medication, and that interruption of this treatment would lead to a breach of Article 8 (ASA at paragraph 26). The Judge in substance addressed this aspect of the Appellant's case directly, and rejected it.
18. For all the reasons given, the Appellant's Grounds do not disclose an error of law on the part of the First-tier Tribunal.
19. The Appellant's challenge fails accordingly.

### **Notice of Decision**

20. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
21. The appeal remains dismissed.

**I. Lewis**

Deputy Judge of the Upper Tribunal  
(Immigration and Asylum Chamber)

000670

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First -Tier Number: HU/51168/2023

**5 June 2024**