IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001502

First-tier Tribunal No:
PA/51204/2023; LP/02566/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 1 July 2024

Before

THE HON. MRS JUSTICE HEATHER WILLIAMS, DBE
UPPER TRIBUNAL JUDGE SMITH

Between

M R
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr L Youssefian, Counsel instructed by Buckingham Legal Associates
For the Respondent: Mr K Ojo, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 18 June 2024

Order Regarding Anonymity

This appeal includes protection grounds. For that reason, it is appropriate to grant anonymity to the Appellant (MR). 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

1. The Respondent appeals against the decision of First-tier Tribunal Judge Coll promulgated on 9 February 2024 ("the Decision"), dismissing on protection and human rights grounds the Appellant's appeal against the Respondent's decision dated 8 February 2022 refusing his protection and human rights claims in the context of a removal to Pakistan.

2. This is the Appellant's second appeal, the first having been dismissed by First-tier Tribunal Judge Graves on 27 April 2021 ("the First Appeal Decision"), who concluded at [85] that the Appellant had not established that he is a gay man or that he is at risk in Pakistan for that or any other reason. The Appellant continues to claim to be at risk on account of his sexuality. It is now said that he is bisexual. He claims to be in a relationship with [T] who is an Indian national. She has her own protection claim which remains pending. She and the Appellant now have a son.

3. The Appellant also pursues a human rights claim on account of his mental health under Article 3 ECHR and on account of that and his family and private life under Article 8 ECHR.

4. Judge Coll applied the Devaseelan guidance and took as her starting point the First Appeal Decision. She adopted the finding that the Appellant was not homosexual and did not accept that he was bisexual.

5. In relation to mental health, the Judge considered the report of Dr Anthony Ahwe dated 27 November 2021 ("the Medical Report") alongside the Appellant's GP records. She gave the Medical Report little weight due to flaws which she identified in that report in particular when read alongside the GP records. She concluded that the Appellant was "not a seriously ill person" ([35] of the Decision) but that, even if she were wrong about that, there was treatment available for his condition in Pakistan. She therefore rejected the Article 3 claim.

6. The Judge went on to consider the Appellant's family and private life. She did not accept that there were very significant obstacles to the Appellant's integration in Pakistan, adopting the findings in the First Appeal Decision ([37]). The Appellant could not meet the Immigration Rules based on his family and private life. She considered the interference with the Appellant's family and private life balanced against the public interest but concluded that the Respondent's decision was not disproportionate. She therefore dismissed the appeal on human rights grounds also.

7. The Appellant appeals the Decision on three grounds summarised as follows:

Ground 1: Failure to consider relevant evidence and submissions made by Counsel.

Ground 2: Erroneous treatment of the Medical Report amounting to procedural unfairness.
Ground 3: Flawed consideration of Article 8 ECHR.

8. Permission to appeal was refused by First-tier Tribunal Judge R A Pickering on 13 March 2024 on the basis that the grounds did not establish an arguable error of law and were merely an attempt to re-argue the Appellant's case. However, following renewal of the application to this Tribunal, permission was granted by Upper Tribunal Judge Stephen Smith on 13 May 2024 for the following reasons:

> "1. I consider ground 2 to be arguable. Fairness may require a tribunal to canvas an issue which has not been ventilated by the parties or their representatives. It may also be necessary to explore the extent to which a judge in this jurisdiction may scrutinise the contents of an expert's report, in circumstances where there is apparent common ground between the parties concerning the report, in light of *Tui v Griffiths* [2023] UKSC 48.
> 2. Grounds 1 and 3 have far less merit. Contrary to what is stated in the grounds for permission to appeal prepared by counsel when applying to the First-tier Tribunal, the judge *does* appear to have addressed the appellant's partner's evidence: see the discussion at para. 23. This ground is a disagreement of fact about the weight the judge should have attached to the evidence, in particular to the weight attracted by the evidence as it emerged during the hearing. Ground 3 also has less merit. The factors on the appellant's side of the scales pertaining to the relationship with his partner attracted little weight; the grounds appear to disagree with the weight ascribed. However, in light of the guidance at paragraph 48 of the Joint Presidential Guidance 2019 No. 1 *Permission to appeal to UTIAC,* I have adopted the pragmatic approach of not seeking to restrict the scope of this grant of permission.
> 3. **This is a case where a rule 24 notice from the Secretary of State is likely to be helpful,** addressing (i) whether there is any disagreement with the recollection of counsel before the First-tier Tribunal, Mr Youssefian – as summarised in the grounds of appeal before the First-tier Tribunal, upon which the appellant relied before this tribunal – pursuant to the approach approved in *Abdi v Entry Clearance Officer* [2023] EWCA Civ 1455; and (ii) the Secretary of State's position in response to the matters raised by the grounds concerning *Tui v Griffiths."*

9. In accordance with the comments of Judge Stephen Smith, the Respondent filed a Rule 24 response dated 24 May 2024. The Respondent argued that the first ground was not made out on the evidence. In relation to the second ground, the Respondent did not take issue expressly with what was said in the grounds about the Respondent's position as regards the Medical Report. It is noted that the Respondent's Presenting Officer relied on the Respondent's decision letter ("the RFRL") and the Respondent's review ("the RR"). The Presenting Officer's record of proceedings was annexed to the Rule 24 response. The Respondent also set out his position as regards Tui v Griffiths to which we come below. The Respondent submitted that the third ground had no merit.

10. The matter comes before us to consider whether the Decision contains errors of law. If we conclude that it does, we then have to decide whether to set aside the Decision in consequence of those errors. If we do so, we then have to decide whether to re-make the decision or remit the appeal to the First-tier Tribunal to do so.

11. We had before us a bundle of documents lodged by the Appellant running to 969 pages which includes the core documents for the appeal and the Appellant's and Respondent's bundles before the First-tier Tribunal. We refer to documents in that bundle so far as necessary as [B/xx]. For reasons which we set out below, following the hearing, Mr Youssefian also filed his attendance note in relation to the hearing, appropriately redacted to remove privileged material.

12. Having heard submissions from Mr Youssefian and Mr Ojo, we indicated that we would reserve our Decision and provide that in writing which we now turn to do.

DISCUSSION

13. Although the main focus of Mr Youssefian's submissions was the second ground which he therefore took first, we consider it more appropriate to take the grounds in order.

Ground 1

14. This ground as pleaded is in summary that the Judge failed to take into account the evidence of the Appellant's partner, [T], when considering whether the Appellant was in fact bisexual. However, at the hearing, Mr Youssefian admitted that, as noted in the grant of permission, the Judge had taken into account the evidence of [T] at [23] of the Decision. The relevant section of the Decision reads as follows:

> "21. The evidence provided by Mr. Qamar for this appeal hearing is no different to that which he provided for the appeal hearing before IJ Graves. Being about his alleged homosexual relationship with the appellant and his testimony that the appellant is homosexual, it has already been decided upon by IJ Graves. It is not new evidence.
> 22. The letter provided by Mr. Shahid is more of the same i.e. facts which are not materially different. It is about another alleged homosexual relationship. On the account of Mr. Shahid and the appellant, this relationship only started after the March 2021 hearing before IJ Graves, so practically no evidence about Mr Shahid and any relationship he had with the appellant could have been before IJ Graves. Mr. Shahid's evidence, nevertheless, qualitatively no different to the evidence presented by Mr. Qamar; it is an assertion about a gay relationship between them. The only difference is that Mr. Shahid did not attend a witness to be cross examined or even provide a signed witness statement with an affirmation of truth. For this reason, I do not regard the evidence from Mr. Shahid as new.
> 23. It follows that neither the letter from Mr. Qamar nor from Mr. Shahid permit me to disregard IJ Graves' findings that the appellant is not

> homosexual. Even though the partner said that she and a woman friend had met up with the appellant in the company of Mr. Shahid on 15 December 2021 to see the Christmas lights, I place no weight on that. First, that was her only time of meeting Mr Shahid and it is not possible definitively to assess an individual's sexual orientation during a superficial social event. Secondly, I have already decided that the issue of whether Mr. Shahid had a homosexual relationship with the appellant is the same issue as that raised about Mr. Qamar. In summary, I adopt IJ Graves' finding that the appellant was not involved in homosexual relationships, with a number of men, including with Mr. Qamar and was not homosexual."

15. Mr Youssefian however continued to criticise this section of the Decision based on two errors he said had been made by the Judge. First, he said that the Judge had rejected [T]'s evidence because she had only met Mr Shahid once which was insufficient reason to discard that evidence and second because by the time that the Judge rejected [T]'s evidence, she had already rejected the Appellant's account and therefore had failed to apply the guidance in Mbanga to look at all the evidence holistically.

16. Mr Ojo relied on the rule 24 response and submitted that this ground was a mere disagreement with the Judge's findings.

17. The part of [T]'s oral evidence which the Appellant considers is relevant to this ground is set out at [8] of the grounds. Her witness statement appears at [B/674-678]. She deals briefly with the Appellant's sexuality at [22] of that statement but does not say how she knows that he was homosexual and is now bisexual. At [9] of the grounds it is said that the significance of the oral evidence is that [T] volunteered the information that the Appellant was in a relationship with Mr Shahid. However, the Judge took into account [T]'s evidence in this regard. She found however that she could not place weight on it as [T] had herself only met Mr Shahid once, would not have been in a position to judge for herself his sexual orientation and therefore that [T]'s evidence could not add to that of the Appellant himself.

18. For the same reasons, we reject the submission that the Judge failed to consider the evidence holistically. The Judge has to make findings which are then part of the overall assessment of credibility. The fact that the Judge made a finding at [22] about the Appellant's relationship with Mr Shahid based on the deficiencies in Mr Shahid's evidence about this (including that he did not attend to give evidence) and relied on the findings in the First Appeal Decision as to the earlier relationship does not mean that she had closed her mind to [T]'s own evidence. However, the Judge was entitled to give little weight to that evidence for the reasons she gave.

19. As we pointed out at the hearing, [21] to [27] of the Decision has to be read as a whole. The Judge took into account the other evidence put forward including the letter from Mr Peter Tatchell. She rejected that

and the photographic evidence for the reasons given at [24] to [26] of the Decision. Having made the findings she did, she then concluded at [27] of the Decision that the earlier finding that the Appellant is not homosexual would stand and that she did not accept as credible that the Appellant is bisexual.

20. Those were findings open to the Judge for the reasons she gave. It follows that the Judge was entitled to dismiss the appeal on protection grounds.

Ground 2

21. In order to set the submissions in context, we set out below the Judge's consideration of the Medical Report and other medical evidence:

> "28. The GP letters [186 dated 7 May 2021 and 187 dated 26 August 2021] and IAPT letter [187] show the following about the appellant's mental health.
> 29. The GP letters [186 and 185] describe him as having low mood and anxiety in 2021 and refers back to an entry in the GP records in 4 August 2020 for the date of onset. He was prescribed 50 mg of sertraline, a first line anti-depressant, and referred to IAPT for talking therapy with a well-being psychological practitioner. I explained to the appellant that I am also a judge in the Social Entitlement Chamber where I assess GP records and mental health regularly. Using that experience, I am able to say that the choice of medication and talking therapy confirm relatively minor problems with mood and anxiety in 2021.
> 30. The IAPT letter shows that he was offered 5 sessions with the first in July 2020. Usually there is a letter at the end of treatment describing what improvements have been made. The appellant said that there was no such letter since he was still finishing these sessions. I found his explanation implausible. He said that he had stopped the sessions in 2020 because he was on medication. He has requested a recommencement recently. If he did not wish to pursue the sessions in 2020, (which were remote and so entirely possible to complete during the pandemic), he would have been discharged and would have needed a new referral. When I explained this to him and how it was surprising to hear that those prescribed ant-depressants could not engage in therapy, he said that it was his own idea. There was no evidence to show that he had resumed with IAPT. The appellant seemed to be making it up as he went along, when faced with difficulties in his account. I find that the appellant had one, maybe more, sessions but did not complete and has not been re-referred.
> 31. Dr. Anthony Ahwe, psychiatrist, produced a medicolegal report [166 – 184] dated 27 November 2021, some months after the last GP letter. His description of the appellant's mental health is significantly more serious than that in the GP letters. I accept that it is possible that the appellant had deteriorated and that this was reflected in the psychiatrist's report.
> 32. I reject that idea however because of the flaws in the psychiatrist's report. First, he has referred to his reading in preparing for the meeting with the appellant – all of it relates to immigration proceedings from 2010 to 16 June 2021. The psychiatrist has not read the GP records. At most he read a GP letter which describes as being in the bundle. *HA (expert evidence;*

mental health) Sri Lanka v SSHD [2022] UKUT 00111 (IAC) states in the headnote:

> *(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.*

33. Dr. Ahwe has done substantially more that 'attempt to brush aside the GP records'. He has not read them or taken any account of them. Secondly, he has accepted entirely the appellant's account of gay relationships [169 – 170] and that his family made threats to him because of his sexual orientation [174] yet he was given IJ Graves' determination where this has all been rejected. Thirdly, he reports that the appellant attended 3 IAPT sessions. He stresses the importance of the appellant attending further psychology input. Yet he does not seem to have seen the IAPT letter or if he has, questioned why the appellant did not attend two of the five sessions offered. Fourthly, he has overstepped his authority by commenting on the law and also the situation in Pakistan; he states that the appellant would not be able to access healthcare services due to the stigma associated with mental illness 'in some cultures' and included Pakistan in 'some cultures'. He has no expert knowledge of the mental healthcare provision in Pakistan (nor does he claim to).

34. I therefore place little weight on Dr. Ahwe's report and prefer the GP letters."

22. We need to begin with the factual position at the hearing before Judge Coll. At [18] of the Appellant's grounds, Mr Youssefian makes the following assertion:

> "But perhaps the most strikingly, the representative for the SSHD was specifically asked by the FtTJ at the appeal hearing if the contents of Dr Ahwe's report were disputed, and she expressly confirmed that they were not."

23. No doubt mindful of the potential need for Mr Youssefian to give evidence before this Tribunal, Judge Stephen Smith when granting permission indicated a need for the Respondent to file a Rule 24 response indicating whether that recollection of what occurred before Judge Coll was accepted.

24. Unfortunately, the Respondent did not deal with that issue head on in the Rule 24 response. Instead, he said that the Presenting Officer had

relied upon the RFRL and the RR which is consistent with the record of proceedings annexed to the Rule 24 response.

25. We were told by Mr Youssefian at the outset of the hearing that Mr Ojo confirmed that the Respondent did not take issue with the recollection of what occurred as set out at [18] of the grounds. However, Mr Ojo in his submissions drew our attention to [13.3] of the Decision where the Judge included as one of the issues to be determined the weight to be given to the Medical Report. He also admitted that the Presenting Officer's record of proceedings did not give any indication that the content of the Medical Report was accepted. It appeared therefore that both the Judge and the Respondent had left the hearing thinking that the Medical Report was disputed. The Respondent had accepted Dr Ahwe's credentials in the RFRL. He had noted in the RR what was being said about the Appellant's mental health but asserted that treatment would be available in Pakistan. Neither of those amount to an acceptance of the contents of the Medical Report.

26. Unfortunately, given the late stage at which this emerged, we were not in a position to listen for ourselves to the recording of the proceedings before Judge Coll. Neither party suggested that we should do so. Despite the Presenting Officer's record of proceedings, Mr Ojo did not suggest that we should go behind what was said in the Appellant's grounds and, as we have noted, no issue is taken in that regard in the Rule 24 response.

27. However, to ensure that we did not decide this issue on the wrong factual footing we asked Mr Youssefian to file with the Tribunal and serve on the Respondent his attendance note, which he duly did. Although that is not a verbatim record of the proceedings, we are satisfied that what is there said bears out what is said at [18] of the Appellant's grounds and we proceed on the basis that the Presenting Officer had indeed indicated that the content of the Medical Report was accepted. We suggest that, in future, if any such concession is made, whether seen as a concession or not, that should be carefully articulated and recorded to avoid the sort of dispute which might have arisen in this case.

28. The issue for us then becomes what flows from the Respondent's acceptance. The Appellant here places reliance on the Supreme Court's judgment in TUI UK Ltd v Griffiths [2023] UKSC 48 ("Tui v Griffiths"). He asserts that the judgment "emphasises the principle that fairness generally requires that if the evidence of a witness is to be rejected, it should be challenged at the hearing so as to give them an opportunity to address the challenge". That is said to be the more so since the Respondent had accepted the content of the Medical Report. As a result, it is said that "there was no room for the [Judge] to criticise

the report, even if she personally had some concerns regarding its content".

29. Tui v Griffiths was a civil claim in which the expert report provided by the claimant as to causation of injury was subjected to criticism (in closing submissions) notwithstanding that the defendant had not submitted any report of its own and had the opportunity to cross-examine the expert but did not take that opportunity. The Judge nevertheless accepted the criticisms put forward by the defendant's Counsel and dismissed the claim. The claimant's appeal was allowed by the High Court. However, that outcome was reversed by the Court of Appeal by a majority judgment. The Supreme Court overturned the Court of Appeal's judgment and allowed the claimant's appeal.

30. We do not propose to deal with the judgment in Tui v Griffiths in detail. The overall thrust of the judgment is that the first Judge's decision was tainted by procedural unfairness. As a general rule, what is fair depends on the circumstances. Furthermore, for the reasons which follow we are satisfied that the Appellant has made out his case that the Judge here acted in a procedurally unfair manner based on what was accepted by the Respondent in relation to the Medical Report and given that the Judge did not put her concerns to the parties. As a result, her findings about the Medical Report fall to be set aside. We come to the consequences of that below.

31. It is however appropriate for us to make some brief observations about Tui v Griffiths taking into account the parties' submissions.

32. The issues which there arose are summarised at [34] of the judgment as "(i) what is the scope of the rule, based on fairness, that a party should challenge by cross-examination evidence that it wishes to impugn in its submissions at the end of the trial? (ii) in particular, does the rule extend to attacks in submissions on the reliability of a witness's recollection and on the reasoning of an expert witness? and (iii) if the rule does so extend, was there unfairness in the way in which the trial judge conducted the trial in this case?".

33. As the Court recognised at [36] of the judgment "as a general rule, the judge has the task of assessing the evidence of an expert for its adequacy and persuasiveness", but that is subject to the issues as identified by the parties and the manner in which the proceedings are conducted because civil law operates an adversarial system.

34. We accept that Tribunal proceedings are also in general an adversarial system. That is however subject to the caveat that it is for the Tribunal to determine for itself on the merits whether the decision of the Respondent breaches either the Refugee Convention, the Human Rights Act 1998 or other relevant international instruments. The

Tribunal therefore has to assess for itself whether and to what extent the expert evidence shows that the relevant test is met.

35. We also do not take from the Supreme Court's judgment any stark proposition that where an expert report is not accepted, it will always be necessary for the party disputing the report to cross-examine the expert. As is said at [70] of the judgment in Tui v Griffiths, the general rule requiring cross-examination where the evidence of a witness is contested is not to be applied rigidly and is not inflexible. It is an issue of overall fairness.

36. In general, the evidence of an expert in proceedings before this Tribunal is disputed not because of an alleged lack of expertise on the part of the expert, but as regards the weight to be given to the report when taking into account other evidence. As here, a Tribunal Judge must assess expert evidence in the context of all the material to determine the issues before it. That is broadly consistent with the exceptions to the general rule regarding cross-examination of a witness as set out at [61] to [68] of the judgment. The Respondent draws particular attention in the Rule 24 response to [66] of the judgment where "the witnesses' evidence of the facts may be contrary to the basis on which the expert expressed his or her view in the expert report". Therefore, if an expert has failed to take into account other evidence which undermines the expert's opinion or bases his or her opinion on facts put forward by an appellant or other witness which are not accepted by the Judge, that is relevant to the weight which can be given to that expert's report. It should not normally be necessary for an expert to be cross-examined save perhaps where an allegation of impropriety is made, or professional expertise is challenged.

37. Furthermore, reports regarding mental health are often largely reliant on self-reporting both of symptoms and cause. It is no doubt for that reason that the Tribunal emphasised in HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC) ("HA") the need for an expert to take into account GP records and for the Judge also to take those into account. We do not consider that the guidance in HA is undermined by the judgment in Tui v Griffiths.

38. The fact of his reliance on the Appellant's self-reporting led us to question whether it could be said that the Judge was entitled to attach little weight to the Medical Report as Dr Ahwe has relied on the Appellant's sexuality and problems associated therewith as reason for his mental health problems, given that the Judge had rejected these propositions after evaluating the factual evidence. However, as Mr Youssefian pointed out, Dr Ahwe also relied on other reasons such as the Appellant's uncertain immigration status. The Medical Report appears at [B/118-136].

39. Based on the guidance in HA, the Judge was entitled to rely on and take into account the GP records. If the Respondent's position had simply been as set out in the RFRL and RR, we would not have accepted that the Judge acted in a procedurally unfair manner by going on to assess the Medical Report against the evidence in the GP records and to prefer the latter as reflecting the nature and extent of the Appellant's mental health.

40. However, as we have accepted that the Respondent did agree the content of the Medical Report, and since there is nothing to suggest that the Judge raised with the parties the flaws which she had identified in that report and her criticisms of it, it follows that her conclusion that the GP records should be preferred over the Medical Report and that the Medical Report should be given little weight as a result, was reached in a procedurally unfair manner. The Judge should have put her concerns to the parties.

41. As a result, [28] to [34] of the Decision fall to be set aside as does the first sentence of [35] of the Decision that the Appellant is not a seriously ill person since that flows from the Judge's analysis of the Medical Report.

42. However, Mr Youssefian accepted that the Judge had thereafter at [35] of the Decision dealt with the Appellant's Article 3 medical claim in the alternative that the Appellant was a seriously ill person and concluded that this claim would fail in any event since there would be treatment for the Appellant's condition in Pakistan. That finding is not challenged and Mr Youssefian therefore accepted that the conclusion in relation to the Article 3 claim should remain undisturbed.

Ground 3

43. Our conclusions in relation to the second ground and the Medical Report are however relevant to the Article 8 claim.

44. In particular, we accept that the Judge's finding at [37] of the Decision that there would be no very significant obstacles to the Appellant's integration in Pakistan needed to take into account the Appellant's mental health condition and failed to do so. That finding would then potentially be infected by the error we have found under the heading of the second ground. The Medical Report needs to be properly and fairly evaluated in order to consider whether the Appellant's mental health condition would form a very significant obstacle to his integration in Pakistan.

45. Had we not found an error under the second ground, we would have found this ground to have less merit. The challenge is largely based on the position of [T] who has a pending asylum claim and their child. It is argued that the Judge raised new issues when assessing Article 8 by

referring to the lack of evidence about the relationship between the Appellant and his child and suggesting that the relationship may not be subsisting ([43.3.2]). However, the remark about the lack of evidence is factually correct. The only evidence was the birth certificate and a brief mention at paragraph [111] of the Appellant's statement ([B/97]) that the child lives with him and [T].

46. Mr Youssefian submitted that the Judge had failed to take into account factors in the Appellant's favour. We do not accept that. As we understood him to accept, there are factors within those listed at [43] of the Decision which could count in the Appellant's favour. The Judge has there explained why less weight is being given to those factors in the balancing exercise. We do not therefore accept that the Judge failed to adopt a balance sheet approach.

47. We accept that the Judge did not take into account the best interests of the child. However, as we have already noted, there was little evidence about that child and the Judge was entitled to make the finding that she could not be satisfied as to the relationship.

48. We accept however that the Judge did not take into account the impact of [T]'s pending asylum claim. She would not be returning to India so the Judge may have decided that it was not relevant. It was however an issue which arose when considering whether family life could be continued in Pakistan. It may be that the finding at [43.3.4] that the Appellant had put forward no evidence to show why the family could not live together in Pakistan would have been sufficient to dispose of that issue.

49. However, as we began our consideration of this ground, the Article 8 findings fail to take into account the Appellant's mental health condition and are therefore also impacted by the second ground and the procedural unfairness there identified.

50. For that reason, we consider it appropriate to set aside the entirety of the Article 8 findings for re-determination.

51. Having accepted that the Appellant has established an error based on procedural unfairness, we agree with Mr Youssefian's submission that the appeal must be remitted for re-determination. However, we see no reason why the appeal on protection or Article 3 grounds should be re-determined. There is no error of law established by the grounds in relation to those conclusions. Accordingly, Judge Coll's findings at [21] to [27] of the Decision and at [35] and [36] of the Decision (except for the first sentence of [35]) are preserved.

CONCLUSION

52. An error of law is disclosed by the Appellant's second and third grounds. We set aside [28] to [34] of the Decision and the first paragraph of [35]. We also set aside the Article 8 assessment at [37] to [44] of the Decision. It follows that the appeal remains dismissed on protection and Article 3 grounds. We remit the appeal to the First-tier Tribunal (Taylor House hearing centre) for re-hearing before a Judge other than Judges Coll or Graves on the Article 8 issue. It is not clear whether the Appellant intends to give evidence and if so whether he requires an interpreter. His witness statement does not indicate that it was interpreted to him. It does not therefore appear that he requires an interpreter.

NOTICE OF DECISION

The decision of Judge Coll promulgated on 9 February 2024 contains errors of law which are material. We set aside [28] to [34], the first sentence of [35] and [37] to [44] of the decision. We preserve the dismissal of the appeal on protection and Article 3 grounds (including Article 3 medical) and remit the appeal to the First-tier Tribunal (Taylor House hearing centre) for re-hearing of the Article 8 issues (including medical) before a Judge other than First-tier Tribunal Judge Coll or Graves. It does not appear that an interpreter will be required for the hearing.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 June 2024