



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/14082/2018

**THE IMMIGRATION ACTS**

**Heard at Birmingham Civil Justice Centre  
On 29 July 2019**

**Decision & Reasons  
Promulgated  
On 7 August 2019**

**Before**

**DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL**

**Between**

**MR AMJAD [K]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Sinker, Counsel, instructed by Just Law Solicitors  
For the Respondent: Ms H Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Pakistan, has permission to challenge the decision of Judge Obhi of the First-tier Tribunal on 6 March 2019 dismissing his appeal against the decision of the respondent to refuse his protection claim. His grounds do not challenge the judge's findings that he had not given a credible claim to face risk on return from the Taliban, whom he said had kidnapped and ill-treated him. Nor do the grounds challenge the

judge's finding that he could not succeed on the basis of his right to respect for private and family life under Article 8 ECHR. Their sole challenge is to the judge's failure to address the Article 3 claim he had made based on his medical circumstances.

2. I heard brief submissions from Ms Aboni and Mr Sinker. Ms Aboni said she would have to concede that the judge entirely failed to address the appellant's Article 3 circumstances connected with his medical condition. Mr Sinker confirmed that he sought a re-hearing, confined solely to issue of whether the appellant's medical circumstances were such that return to Pakistan would constitute a violation of Article 3 ECHR.
3. I concur with the parties that the judge's decision must be set aside for material error of law. The appellant had raised his medical condition in his asylum application. Whilst not specifying anything about his medical condition in his grounds of appeal, the appellant did invoke Article 3 and at the hearing Mr Sinker (before the FtT judge as well), expressly raised the issue of the appellant's Article 3 claim based on his medical circumstances. The judge noted this submission at paragraph 37 as follows: "In relation to his medical condition the appellant claimed that there would be a breach under Article 3 if he were returned and he claimed family life with his family, he did not have a partner." The judge had earlier noted at paragraph 25 the respondent's opposition to this aspect of his claim:

"In respect of the appellant's claim that he suffered from migraine and depression it is note that his medical complaints do not reach the high threshold set out in the case of N v SSHD [2005] UKHL 31 and that treatment is available in Pakistan for those with mental health problems and that he will be able to access it as he has family support."
4. Yet having addressed the appellant's asylum and humanitarian protection claim and then his Article 8 claim based on his family and private life, the judge simply forgot to address the Article 3 issue or the submissions she had received regarding it.
5. I am bound to say that the appellant's Article 3 claim based on his medical condition does not strike me as at all strong, but the appellant had produced a psychiatric report by Dr Chaudhry which found him to be suffering from PTSD and expressed the opinion that "[h]is mental health that includes PTSD would deteriorate further with increased suicidal thoughts and tendencies to commit suicide will get worse if he is sent back to Pakistan". By a narrow margin, I conclude that the appellant is entitled to present the evidence relating to his medical circumstances in the context of a fresh hearing before an FtT judge. However, as already stated, the scope of this hearing will be strictly confined to his medical circumstances and whether or not returning him to Pakistan would give rise to a breach of Article 3. Strictly speaking, if the appellant has permission to argue his medical circumstances, his claim cannot be confined to Article 3 since one aspect of Article 8 is the right to physical

and moral integrity, which was not considered by Judge Obhi. In view of the fact that established case law sets a high threshold for both Article 3 and 8 medical cases, this technical point may not make a difference, but the matter of whether the appellant's medical circumstances entitle him to succeed on human rights grounds is best left open so as to include both Article 3 and 8.

6. To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT (not before Judge Obhi), confined to the issue of whether the appellant's medical circumstances prevent his return on human rights grounds.

No anonymity direction is made.

Signed

Date: 2 August 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, looping 'S' at the end.

Dr H H Storey  
Judge of the Upper Tribunal