Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/11367/2019**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 25th May 2021	**On 15th June 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

N A
(Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr N Khan, NK Solicitors acting as agents for IIAS Solicitors
For the Respondent:	Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

An anonymity direction was made by the First-tier Tribunal ("FtT"), and as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, NA is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies amongst others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

Introduction

1. The appellant is a national of Pakistan. She claims to have arrived in the United Kingdom on 18 June 2009 on a family visit visa. She claimed asylum in May 2013. That claim was refused by the respondent in March 2016 and the appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Thomas for reasons set out in a decision promulgated on 27th January 2017. The appellant then made further submissions to the respondent in July 2017 and December 2018. On each occasion the respondent refused to treat the further submissions as a fresh claim. On 2nd August 2019 the appellant again made further submissions in support of her claim for international protection. Her son, who I refer to as [SA] (*born 19th July 1995),* is a dependant. The appellant's claim was refused by the respondent for reasons set out in a decision dated 7th November 2019.

2. The appellant appealed the respondent's decision of 7th November 2019. Her was dismissed by First-tier Tribunal Judge Hobson for reasons set out in a decision promulgated on 10th February 2020.

3. The appellant relies upon undated 'Grounds for Permission to Appeal' settled by counsel, Mr F Chaudhry. The appellant claims the findings made by Judge Hobson regarding the claim for international protection are flawed. First, it is said that Judge Hobson accepted the appellant is vulnerable having been a victim of domestic violence and someone who has a number of health conditions. The appellant claims Judge Hobson found the appellant's evidence to be extremely vague and in assessing the evidence, "applied a very high standard of proof". Second, the appellant claims the case law favours the appellant. Reference is made, without further elaboration, to the decisions in Chivers [1997] INLR 212 and HK v SSHD [2006] EWCA Civ 1307. Third, it is said Judge Hobson made findings on the basis of speculation. The appellant also claims Judge Hobson materially erred in law in assessment of the appellant's Article 8 claim. The appellant claims the

conclusion that the appellant has failed to establish that there would be very significant obstacles to her integration into Pakistan is not sustainable because the appellant is registered blind, has other health conditions, and she has a dependent son with learning disabilities. Furthermore, the appellant claims that in reaching her conclusion that there are no exceptional circumstances which would lead to unjustifiably harsh consequences for the appellant in breach of Article 8, Judge Hobson erred in failing to attach any weight to the appellant's blindness and the length of her stay in the UK.

4. Permission to appeal was granted by Upper Tribunal Judge Jackson on 17th July 2020. She said:

> "It is arguable that the First-tier Tribunal, when considering whether there are very significant obstacles to reintegration failed to take into account the Appellant's blindness or any impact of that on reintegration on return to a country from which she has been absent for 11 years. Although there was a lack of evidence as to the Appellant's son's learning disabilities and the impact of those on his life, it is arguable that these were not taken into account when considering if there were any very significant obstacles to reintegration. It is further arguable that neither matter was considered as part of the balancing exercise for the purposes of Article 8.
>
> There is far less merit in the remaining grounds of challenge given the detailed assessment of the protection claim by the First-tier Tribunal which did not arguably fail to have regard to the Appellant's vulnerability and accepted much of the basis of claim to be credible, just not that she would be at risk on return. However, I do not exclude these grounds from the grant of permission."

The appeal before me

5. I heard submissions from Mr Khan on behalf of the appellant. The respondent had filed and served a rule 24 response dated 17th August 2020. At the conclusion of the hearing before me I informed the parties that in my judgement there is no material error of law in the decision of Judge Hobson and the appeal is dismissed. I informed the parties that I would provide full written reasons in writing, and this I now do.

6. Mr Khan adopted the undated skeleton argument that is to be found at pages 1 to 4 of the appellant's bundle sent to the Tribunal by IIAS Solicitors under cover of a letter dated 17th May 2021.

7. Although dealt with last in the appellant's skeleton argument, it is appropriate to consider the appellant's challenge to the decision to dismiss the appeal on international protection grounds first.

8. The appellant claims Judge Hobson erred in dismissing the international protection appeal on the grounds of credibility. The appellant submits it is not in dispute that she is a victim of domestic violence, registered as blind, and is a vulnerable witness. Judge Hobson accepted the evidence that the appellant's parents are now deceased, and the appellant submits that as her evidence was 'more or less' deemed credible, the appeal should have been allowed. Mr Khan did not expand upon those submissions at all before me.

9. It was in my judgement open to judge Hobson to conclude that the claim for international protection cannot succeed for the reasons set out at paragraphs [43] to [54] of her decision. Judge Hobson referred to the previous decision of First-tier Tribunal Judge Thomas and in light of the previous findings made, accepted the appellant was physically abused by her ex-husband when she lived in Pakistan and sought refuge in a women's shelter. She noted they divorced in 2009. As Judge Hobson properly noted, the principles set out in Devaseelan [2002] UKAIT 00702, applied to the appeal before her, and the decision of Judge Thomas stood as an assessment of the claim that the appellant was making at the time of the first decision. Judge Hobson properly went on to consider, at paragraph [45] of her decision, the appellant's claim that her ex-husband had made threats towards her through third parties whom he had contacted. She considered the evidence to be vague and incredible.

10. Judge Hobson also considered the appellant's claim that she would be at risk of destitution as a lone female with no family support, such that return to Pakistan would be contrary to Article 2 and 3 ECHR. Judge Hobson accepted the appellant's parents have died but rejected the evidence that the appellant has no close family members left in Pakistan and would be without any support. At paragraph [49] of her decision, Judge Hobson addresses the evidence of the appellant's brother Asjad Hussain. He claims in his letter dated 23rd July 2019 that their mother, father and brother have passed away and the appellant now has no close relatives who can support and help her. The appellant's evidence was that her sister-in-law *(i.e. the wife of the appellant's brother who has passed away),* her nieces and nephews continue to live in Pakistan and they, and the appellant, are supported by her bother. Judge Hobson noted, at paragraph [50], that the appellant's parents house is uninhabited and there was no evidence before the Tribunal that that house is owned by her brother's widow (*i.e. the appellant's sister-in-law who remains in Pakistan)*. Judge Hobson found that in all the circumstances, the appellant would not be returning to Pakistan as a lone woman without family support.

11. At the hearing before me, Mr Khan accepted Judge Hobson was entitled to find on the evidence before the Tribunal that the appellant's sister-in-law, nieces and nephews live in Pakistan and that they are financially supported by her brother. He also accepted Judge Hobson was right to say that the appellant's brother provides her with financial support. Mr Khan accepted Judge Hobson properly noted the appellant's evidence that her parents house is uninhabited. He accepts there was no evidence before the Tribunal regarding the ownership of the house and the evidence as to whether her sister-in-law wanted to sell the house was vague. He accepts it was open to Judge Hobson to find that the evidence was very vague and for that reason, to lack credibility.

12. The findings and conclusions reached by Judge Hobson regarding the claim for international protection and on Article 2 and 3 grounds were neither

irrational nor unreasonable in the Wednesbury sense, or findings and conclusions that were wholly unsupported by the evidence. The weight to be placed upon factors of identified vulnerability, and the extent to which the vulnerability was an element of any inconsistency or lack of clarity, was a matter for the Judge to be considered on the evidence before the Tribunal. Mr Khan did not draw my attention to any evidence that was before Judge Hobson that was capable of establishing that the appellant's visual impairment or health is such that it impacted upon her ability to give clear and cogent evidence before the Tribunal.

13. At paragraph [17] of her decision, Judge Hobson confirms that in considering the claim for international protection she applied the lower standard. Mr Khan did not draw my attention to anything in the decision that even begins to indicate that Judge Hobson applied anything other than the lower standard. The judge's decision took account of all the evidence, and she accorded appropriate weight to the evidence that was available and was entitled to draw the adverse conclusions that she did from the evidence. The appellant's claim that the judge's approach to the analysis of the evidence is mere disagreement with the reasoning of Judge Hobson. Judge Hobson's decision to dismiss the appeal on international protection and Article 2 and 3 grounds is cogently reasoned and was properly open to her on the evidence before the Tribunal.

14. I turn then to the appellant's claim that Judge Hobson erred in her assessment of the appeal on Article 8 grounds. Mr Khan submits the focus of the appeal before me is upon the Judge's assessment of the Article 8 claim and in particular, whether the appellant has established that there are very significant obstacles to integration in Pakistan.

15. I take the six points referred to in paragraph 1 of the appellant's skeleton argument together, since they all concern the Judge's assessment of the private life claim made by the appellant.

16. In Parveen v SSHD [2018] EWCA Civ 932, the Court of Appeal considered the relevant provision, paragraph 276ADE(1)(vi) which applies where an applicant has lived continuously in the UK for less than 20 years and "*there would be very significant obstacles to their integration in the country of return*". As Underhill LJ noted in Parveen v SSHD, that test will not be met by "mere inconvenience or upheaval". In the end, the task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

17. I reject the appellant's claim that Judge Hobson's finding that the appellant will receive support from her nephews and nieces is based upon speculation. Judge Hobson found, at paragraph [51], that the appellant would not be returning to Pakistan as a lone woman without family support. She found that there is a financial and emotional support available to the appellant in Pakistan. As I have said at paragraph [11] above, at the hearing before me, Mr Khan accepted Judge Hobson was entitled to find on the evidence before the Tribunal that the appellant's sister-in-law, nieces and nephews live in Pakistan and that they are financially supported by her brother. He also accepted Judge Hobson was right to say that the appellant's brother provides her with financial support. The findings were rooted in the evidence and are neither unreasonable nor perverse.

18. At paragraph [57] Judge Hobson accepted the appellant and her son have been in the United Kingdom for over 10 years and have developed relationships with friends during that time. She accepted the respondent's decision to refuse the application for leave to remain amounts to an interference with their right to a private life. At paragraph [61], she concluded that neither the appellant's nor her son's health is such that it could not be treated appropriately in Pakistan. Family and financial support is potentially available to them and Judge Hobson was not satisfied that

there would be very significant obstacles to either of them integrating into Pakistani life.

19. I reject the claim that Judge Hobson failed to take into account the appellant's impaired vision or any impact of that on her reintegration in a country from which she has been absent for 11 years, and that in reaching her decision, Judge Hobson failed to have regard to [SA's] learning disability. At paragraph [52] Judge Hobson referred to the appellant's health and found there was no credible evidence before her to support a finding that the necessary treatment she requires is not available in Pakistan.

20. During the course of the hearing before me, I referred Mr Khan to the letter from Dr Mehreen Ali of the Albion House Surgery dated 14th January 2020 that was relied upon by the appellant at the hearing of her appeal before the FtT. The letter confirms the appellant is registered blind, due to the chronic and degenerative ophthalmological condition of retinitis pigmentosa, that requires ophthalmological monitoring by a consultant eye specialist. The letter confirms the appellant suffers from mental health problems in the form of generalised anxiety and a depressive disorder that is treated with antidepressant and antipsychotic medication. Having had an opportunity of reading that letter, Mr Khan accepted that Judge Hobson accurately summarised the evidence at paragraph [52] of her decision and it was open to her to note that Dr Ali had failed to explain her conclusion that the appellant would not be able to pay or have access to reliable healthcare in Pakistan. He accepted it was in all the circumstances open to Judge Hobson to conclude, as she did at [53], that she could not be satisfied that the appellant will be unable to obtain appropriate medical treatment.

21. The appellant submits she has been in the UK for several years and her health has not improved. She questions how it might improve in a third world country. With respect to the author of the skeleton argument, the

claim is misconceived. In GS (India) v SSHD [2015] EWCA Civ 40, Underhill LJ said at [111]:

> "First the absence or inadequacy of medical treatment, even life preserving treatment, in the country of return, cannot be relied on at all as a fact engaging article 8: if that is all there is, the claim must fail. Secondly, where article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may or may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving rise to a breach since that would contravene the no obligation to treat principle."

22. In SL (Saint Lucia) v SSHD [2018] EWCA Civ 1894, the Court of Appeal considered whether Paposhvili had any impact on the approach to Article 8 claims but rejected that submission. At [27], Hickinbottom LJ said:

> "As I have indicated and as GS India emphasises, article 8 claims have a different focus and are based upon entirely different criteria. In particular, article 8 is not article 3 with merely a lower threshold: it does not provide some sort of safety net where a medical case fails to satisfy the article 3 criteria. An absence of medical treatment in the country of return will not in itself engage article 8. The only relevance to article 8 of such an absence will be where that is an additional factor in the balance with other factors which themselves engage article 8?.

23. All that the appellant relies upon here in support of her Article 8 claim is her wish to continue with medical treatment in the UK. That in itself is insufficient to establish an Article 8 claim.

24. At paragraph [54] of her decision, Judge Hobson referred to the appellant's son, [SA], and noted he is an adult who has learning difficulties. She noted there was no evidence before the Tribunal of the extent of his impairment, nor of any particular difficulties he is likely to have, if he returns to Pakistan. The evidence before the Tribunal was that he has lived alone in the UK for a time and does not have any requirement for care and support, aside from that provided by the appellant. At paragraph [57] Judge Hobson accepted that the appellant and her son have been in the United Kingdom for 10 years

and that the appellant has developed relationships with friends during that time.

25. In Kamara v SSHD [2016] EWCA Civ 813, [2016] 4 WLR 152, Sales LJ held that the idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life. When pressed, Mr Khan was unable to identify any evidence that was before the First-tier Tribunal that Judge Hobson had failed to take into account or have regard to. He was equally unable to identify any findings made by Judge Hobson that could be considered to be unreasonable or perverse.

26. The only ground of appeal available to the appellant was that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. The judgment of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 confirms that the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the rules. That was plainly the approach adopted by Judge Hobson at paragraphs [49] to [67] of her decision.

27. In my judgement, read as a whole, Judge Hobson reached conclusions that were properly open to her on the evidence before the Tribunal. The Judge referred to the obstacles to integration that were relied upon by the appellant. Quite simply, there is nothing in the evidence before the Tribunal that establishes that the stringent test set out in paragraph 276ADE(1)(vi) could be met. The findings made by the judge were findings that were properly open to the judge on the evidence and cannot be said to be perverse, irrational or findings that were not supported by the evidence. The

assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole.

28. In reaching her decision, Judge Hobson carried out an overall proportionality assessment and whether a fair balance has been struck between the individual and public interest, noting the express statutory provision set out in s117B of the 2002 Act. She referred to factors that weigh in favour of the appellant. It was in my judgement open to judge Hobson to conclude that the removal of the appellant is in all the circumstances proportionate.

29. It is now well established that it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence. The assessment of such a claim is always a highly fact sensitive task. The FtT judge was required to consider the evidence as a whole and she plainly did so, giving adequate reasons for her decision.

30. It follows that I dismiss this appeal.

Notice of Decision

31. The appeal is dismissed. The decision of First-tier Tribunal Judge Hobson stands.

V. Mandalia Date 28th May 2021

Upper Tribunal Judge Mandalia