Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-003468
(HU/50378/2021); IA/04812/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 October 2022	**On 27 November 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE
DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MR SYED SHEDA HASSAN SHAH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Maqsood of Marks & Marks Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who was born on 6 August 1979. He appeals, with permission, against First tier Tribunal Judge Davey's (Judge Davey's) decision to dismiss his appeal against the respondent's decision to refuse his human rights claim.

Background

2. The appellant entered the UK as a Tier 4 student on 14 April 2011 with leave valid until 27 August 2012. His leave was extended to 25 February 2014, but a further application for Tier 4 leave made on 24 February 2014 was refused on 14 May 2014, subsequent to which he was served with removal papers. The basis of that refusal decision was that he had used deception during an English language test and had fraudulently obtained a TOEIC certificate. The appellant was detained during an enforcement visit on 22 May 2014 and claimed asylum the following day. He withdrew his claim on 28 May 2014 and then lodged an appeal against the Tier 4 refusal decision on 4 June 2014. The appeal was allowed to the extent that the respondent was to reconsider the decision. The application was refused again upon reconsideration, on 26 January 2018, again on the grounds of fraudulent use of a TOEIC certificate through a proxy test-taker, and the appellant appealed against that decision on human rights grounds.

3. The appellant's appeal came before First-tier Tribunal Judge Widdup on 6 November 2018 who heard oral evidence from the appellant and concluded that he had acted dishonestly in relation to the ETS test and therefore could not meet the requirements of the immigration rules as a Tier 4 student. The judge found that there were no very significant obstacles to the appellant's integration in Pakistan and that he could not meet the requirements of paragraph 276ADE(1) of the immigration rules. It was found that the decision did not breach his human rights and the appeal was accordingly dismissed in a decision promulgated on 23 November 2018. Permission to appeal to the Upper Tribunal was refused and the appellant became appeal rights exhausted on 13 March 2019.

4. The appellant was encountered working illegally on 14 December 2018. He then made a further human rights claim on 26 June 2019, on the basis of medical grounds and his private life in the UK. That application was also refused, on 5 February 2021. The respondent, in refusing the appellant's claim, considered that the claim fell for refusal on suitability grounds under paragraph S-LTR.4.2 of Appendix FM, owing to his fraudulent use of a TOEIC certificate in his Tier 4 application on 24 February 2014. The respondent found further that there were no very significant obstacles to the appellant's integration in Pakistan and that he could not meet the requirements of paragraph 276ADE(1) of the immigration rules. The respondent considered whether there were exceptional circumstances which would render refusal a breach of Article 8 or whether there were circumstances giving rise to a breach Article 3 but concluded that there were none. It was noted that although the appellant had previously claimed to fear harm in Pakistan, he had subsequently withdrawn his asylum claim. The respondent had regard to the adverse findings of the First-tier Tribunal in the appellant's previous appeal and also considered the medical evidence upon which he was

relying, consisting of a letter dated 14 October 2020 from Visiting Doctors Services referring to him as suffering from mild to moderate depression. The respondent considered that the appellant could access treatment in Pakistan and that his medical condition would not lead to his removal being in breach of Article 3 or 8.

5. The appellant's appeal against that decision came before Judge Davey for hearing. The case was heard on 5 May 2022 and was dismissed by Judge Davey in a decision which is dated as promulgated on 13 September 2022. Some confusion has since arisen about an earlier draft of Judge Davey's decision and the date of promulgation but nothing material arises from this in any event, in light of the outcome of this appeal.

6. Judge Davey found that the evidence in relation to the appellant's medical claim was sparse and he endorsed the respondent's reasons in the refusal decision for finding that removal would not breach Article 3. He found that the appellant would be returning to his home area where his mother and family members lived and that there was nothing to show that he would have any difficulties in integrating into life in Pakistan or that he would be unable to access appropriate medical treatment there if required. Judge Davey considered that some of the appellant's feelings of lack of well being were essentially related to his uncertain immigration status and he found there to be no evidence to suggest that he would not have access to medical treatment and family support in Pakistan. The judge found nothing in the evidence to suggest that the appellant's medical health would interfere with his ability to enjoy life in Pakistan such that his removal would be in breach of Article 8 and found no evidence to suggest that the respondent's decision was disproportionate. He found that there was no evidence upon which to depart from Judge Widdup's findings in relation to the TOEIC deception and concluded that the appellant failed to meet the immigration rules on suitability grounds.

Proceedings before the Upper Tribunal

7. The grounds of appeal seeking permission to appeal against Judge Davey's decision are not clearly particularised. Essentially, the grounds assert that the judge, having accepted that private life existed for the appellant, then failed to take into account all relevant factors including compelling and compassionate circumstances, namely the fact that he had been residing in the UK since 2011, that he had not visited his native country since 2011, that he was not a financial burden on public funds, that he had an established life in the UK and that he did not have any income, home, bank account or driving licence outside the UK. It was asserted that the judge's reasoning was inadequate and

insufficient, that he had erred by finding there to be no compassionate or compelling circumstances and that he had failed to consider the medical evidence in the appellant's bundle.

8. Permission was granted by a First-tier Tribunal Judge on the basis that Judge Davey had arguably failed to give adequate reasons as to whether Article 8 was engaged on private life grounds and what weight was to be given to the factors considered.

9. The matter was then listed for hearing and came before us on 7 October 2022, following an adjournment from a previous date owing to Her Majesty the Queen's funeral.

10. At the commencement of the hearing, Mr Kotas conceded that Judge Davey's decision contained material errors of law as he had not given full reasons for his findings on Article 8 and he submitted that the decision needed to be re-made on Article 8 in order for full and proper findings to be made.

11. There was then some discussion as to the onward disposal of the appeal and we enquired of Mr Maqsood as to why the decision could not be re-made by ourselves at this hearing, as Mr Kotas requested. Mr Maqsood submitted that the appellant's case was that he had no means of survival in Pakistan as he had no savings, driving licence or accommodation in that country and would have no support from his family. His position was that the case ought to be remitted to the First-tier Tribunal for a *de novo* hearing as the appellant had been deprived of a fair hearing before Judge Davey, there had been no proper assessment of his claim and he needed to provide further evidence. We enquired as to what further evidence the appellant intended to adduce. Mr Maqsood advised us that the appellant needed an Urdu interpreter in order to give oral evidence and that he wanted to provide a psychiatric report. We enquired of Mr Maqsood as to why the appellant could not give his evidence in English as he was claiming to have studied in the UK for several years and came here as a Tier 4 student, having (he claimed) satisfied the English language test criteria. His reply was that the appellant could speak English but owing to his depression he needed an interpreter to assist him. We enquired of Mr Maqsood if the appellant was claiming that his mental health had deteriorated since the appeal before Judge Davey a few months previously and he said that it had not but that it had not improved.

12. Mr Kotas objected to there being a further hearing as there had been no Rule 15(2A) application to adduce further evidence, and the issues were very narrow. The only issue was Article 8 and there was no reason why further oral evidence was needed. The appellant's witness statement was available to the Tribunal and no issue was taken with the evidence

therein or with the claims made at [9] of the grounds as to the appellant's circumstances. The appeal could proceed on the basis of submissions only.

13. We decided that there was no reason why, having set aside Judge Davey's decision in line with Mr Kotas's concession on the Article 8 findings, the decision could not be re-made by ourselves at the hearing. Although Mr Maqsood indicated that the appellant would give oral evidence and would require an interpreter to do so, we could not see a proper reason for him not giving his evidence in English. Indeed, we note from Judge Widdup's decision that he had given his evidence before a previous Tribunal in 2014 as well as before Judge Widdup in 2018 in English. We did not see how a diagnosis from 2020 of mild to moderate depression would be a reason for him to require an interpreter when none had been required previously. In any event we considered there to be no need for the appellant to give oral evidence as he had provided evidence before Judge Davey only a few months earlier both in the form of a written statement and oral evidence and was not claiming that his circumstances had changed since then. Mr Kotas did not challenge that evidence. Whilst it was claimed that a psychiatric report was sought, there was no reason given as to why such a report was required or how it would take matters forward, when it was said that the appellant's condition was the same as when seen by the doctor who had provided the letter of 14 October 2020 in the appeal bundle. Indeed, the respondent's refusal decision referred to the appellant having been requested, in January 2021, to provide an up to date report further to that letter of 14 October 2020, but he had not done so for the hearing before Judge Davey. There had been no mention of a psychiatric assessment in the grounds seeking permission and no Rule 15(2A) application had been made.

14. In the circumstances we considered there to be no reason for the matter to be adjourned to another day or to be remitted to the First-tier Tribunal. The appellant's statement stood as his evidence, there was no claim as to a change in circumstances since Judge Davey's decision, and both parties were able to make submissions.

Re-Making the Decision

15. Mr Maqsood submitted that the appellant had been in the UK for 11 years, the first 8 of which had been lawful, and that he would be destitute on return to Pakistan. He had no means of surviving in Pakistan. He had last been there in 2013, which was a significant period of absence. He had no contact with relatives in Pakistan and he had no source of income, no driving licence, no home and no bank account. He did not have a criminal history. The medical evidence confirmed that he

was unable to travel. Mr Maqsood relied upon the medical letter of 14 October 2020 attesting to the appellant's previous symptoms of low mood, the provisional diagnosis of mild to moderate depression and the fact that he had started taking anti-depressants. The appellant had been unable to obtain further medical evidence from the NHS and he had no funds for a private medical report. He was able to speak English and had not had recourse to public funds. There were very significant obstacles to integration and compelling circumstances outside the immigration rules.

16. Mr Kotas submitted that the starting point was the decision of Judge Widdup where it was found that there were no very significant obstacles to integration in Pakistan. In terms of the decision in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813, the appellant would not be an outsider as he had lived in Pakistan for over 30 years and was familiar with the language and culture and the customs of that country. The TOEIC issue was relevant. There were no exceptional or compassionate circumstances being put forward. This was a truly unremarkable case. The appellant was a single male with no family in the UK. The fact that he spoke English and had not been a burden on the public purse were neutral factors. His status here had always been precarious. There was no feature of his private life to depart from the public interest. His case rested solely on his length of residence here with no evidence of ties such as work, studies, societies or friends. Even if he had no savings, driving licence or bank account in Pakistan, that was unsurprising as he had been living in the UK for 11 years and there was no reason why he could not acquire these on his return. Even if he currently had no contact with his family in Pakistan he could re-establish contact. Even if he had no home to go to, he could live with relatives. The medical evidence was unremarkable and the appellant could be treated in Pakistan if required. There was no substance to the submission that he could not travel alone to Pakistan. It was relevant to consider that he had previously committed deception. There were no unjustifiably harsh consequences to his removal and no breach of Article 8.

17. Mr Maqsood had no reply to the submissions.

Discussion

18. The key points relied upon by the appellant as establishing an Article 8 claim were identified by Mr Maqsood and are contained in the appellant's witness statement of 28 October 2021 and within his grounds of appeal at [9], namely that he has been in the UK for 11 years, 8 of those years lawfully; he would be destitute if he were returned to Pakistan; he had last visited in Pakistan in 2013; he had no

contact with relatives since leaving that country; he had no income, home, savings, bank account or driving licence in Pakistan; and that he suffered from depression. However, we find that none of those amount to very significant obstacles to integration or compelling circumstances outside the immigration rules and none of those provide any reasons for departing from the decision of Judge Widdup.

19. The appellant cannot meet the requirements of the immigration rules. The suitability provisions in S-LTR.4.2 preclude him from meeting the requirements of paragraph 276ADE(1). Judge Widdup found that the appellant had failed to provide an innocent explanation in regard to his fraudulent use of a TOEIC certificate in a previous application for Tier 4 leave and that the respondent had discharged the burden of proving deception. The appellant has provided no further evidence since that time to undermine Judge Widdup's decision and the grounds seeking permission did not challenge Judge Davey's decision in relation to that particular issue.

20. In any event, as we have stated above, we find nothing in the appellant's circumstances to demonstrate that there would be very significant obstacles to integration in Pakistan. As Mr Kotas submitted, even if the appellant's circumstances are as claimed in his statement and he currently has no established connections with relatives in Pakistan and no income, bank account, home or driving licence in that country, there is no reason why he could not acquire these on return. His own evidence is that his mother and siblings remain in Pakistan and there is no reason why he could not re-establish contact with them and access support from them in settling back into life there. According to the findings made by Judge Widdup the appellant has worked in Pakistan previously and there is no reason why he could not find work again, with the benefit of the studies undertaken in the UK and his English language skills. He has spent the majority of his life in Pakistan and would no doubt have retained connections there which he could re-establish upon his return. He is by no means an outsider, in the terms set out in Kamara.

21. As for the appellant's claim in regard to his medical condition, the only evidence is a letter dated 14 October 2020 from Visiting Doctor Services confirming that at that time he was presenting with low mood and anxiety and a provisional diagnosis was made of mild to moderate depression. It was considered that his symptoms would most likely start to improve over the next couple of months. Although it was stated that he was not likely to be able to travel on his own, no reason was provided for that. In any event the appellant did not, in the year and a half leading up to the appeal before Judge Davey, produce any further medical evidence, despite the respondent having requested him to do

so in January 2021 (as the refusal letter confirms at page 6 of 11). We do not accept that he was unable to do so for the reasons he claimed, particularly as he now claims that he would be able to do so if the appeal was heard on another day. The request currently made for an adjournment in order to provide a psychiatric report was not made on the basis of any claimed deterioration in his condition and does not explain why a report was needed now when it had not been provided before Judge Davey, only a few months earlier. There is therefore no reason to conclude that the appellant suffers from anything more than mild to moderate depression. It is relevant to note that the document preceding the doctor's letter, at page 6 of the appellant's appeal bundle, a letter from CNWL Talking Therapies Service dated 3 February 2020 referred to the appellant's difficulties arising from his worries and anxieties about his immigration case. It may well be that the appellant's condition would improve with the certainty of his status but in any event there is no suggestion that he would be unable to access relevant medication or treatment in Pakistan.

22. Accordingly, whilst it is accepted that the appellant has established a private life in the UK, given his residence here for 11 years, and that Article 8 is accordingly engaged, there is no basis for concluding that the interference with that private life through his removal to Pakistan would be disproportionate to the public interest in maintaining an effective immigration control. The appellant cannot meet the requirements of the immigration rules. The respondent's decision does not give rise to unjustifiably harsh consequences for the appellant. There are no very significant obstacles to his integration in Pakistan. He can re-establish himself in Pakistan, as already discussed above. He can access any required medication and medical treatment in Pakistan. Although he has lived in the UK for 11 years, he has only had actual leave to remain until February 2014, aside from extended leave, and has been found to have exercised deception in an application made in 2014. In any event he previously spent over 30 years living in Pakistan and will be able to re-establish ties to that country. He has not produced evidence of any significant ties to the UK. Although he speaks English and may not have been a burden on the public purse, those are neutral factors. The public interest factors in section 117B of the Nationality, Immigration and Asylum Act 2002 provide his private life with little weight and there is nothing to outweigh the public interest in his removal.

23. For all of these reasons, we conclude that the respondent's decision is entirely proportionate and the appellant's appeal simply cannot succeed on Article 8 grounds. The appeal is accordingly dismissed.

DECISION

24. The original Tribunal was found to have made an error of law in its findings on Article 8 and the decision was set aside in that regard. We re-make the decision by

Signed S Kebede

Upper Tribunal Judge Kebede Dated: 19 October 2022