



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

Case No: UI-2021-001891  
First-tier Tribunal No: HU/50815/2021  
IA/02995/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated**  
**On 19 March 2023**

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**SAQIB JAMAL**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Dhanji, Counsel instructed by ATM Law Solicitors  
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

**Heard at Field House on 29 November 2022**

**DECISION AND REASONS**

1. This is an appeal against a decision of Judge of the First-tier Tribunal Young-Harry (“the judge”) promulgated on 18 September 2021.
2. The appellant is a citizen of Pakistan. In 2011 he entered the UK as a student with leave until 2014. He attempted, without success, to extend his leave as a student and has been in the UK without leave since 2014.
3. In 2013 he began a relationship with a British citizen (“the sponsor”) and they married in 2017. In 2017 he applied for leave to remain as the sponsor’s spouse. The application was refused and subsequent appeal dismissed. He became appeal rights exhausted on 10 July 2019.

4. On 22 July 2019 he applied again for leave. His application was refused without a right of appeal. On 22 July 2020 he applied again. This application was refused on 9 March 2021 with a right of appeal.

### **Decision of the First-tier Tribunal**

5. The judge found that the appellant has a family life with the sponsor, as well as a private life in the UK, that engages Article 8(1) ECHR.
6. The judge considered whether there were insurmountable obstacles to the appellant's family life with the sponsor continuing in Pakistan (which is the applicable test in Appendix FM of the Immigration Rules). The assessment of insurmountable obstacles in the decision is focused on the sponsor's health. In paragraphs 18 to 21 the judge referred to the sponsor's GP notes, a letter from consultant psychiatrist Dr Yukselen dated 7 June 2021 and a letter from her GP dated 21 May 2021. The judge stated in paragraph 22 that there was not up-to-date medical evidence before him as to the current situation but that clear details of the challenges faced by the sponsor had been provided in the witness evidence. The judge found that the sponsor would be able to obtain treatment in Pakistan. At paragraphs 25 - 27 of the decision he stated:
  - “25. As previously stated, I have not been provided with any up to date or current medical evidence, I am therefore unclear as to Ms Durani's current state of health. However, I find if she chooses to go to Pakistan with the appellant, she can continue to receive treatment there, if her problems are ongoing.
  26. Although I accept the standard and quality of healthcare in Pakistan, does not compare to the standards in the UK, I find as there is available healthcare in Pakistan, Ms Durani can receive some level of care and treatment there; she can receive intervention by way of medication and counselling if necessary. In the alternative, as a British citizen she can continue to receive treatment in the UK during regular visits.
  27. I do not find, the appellant's wife's health concerns, amount to insurmountable obstacles to family life continuing on return. I find the appellant has failed to show he meets the requirements of EX1.1. Accordingly he fails to meet all the requirements of Appendix FM.”
7. The judge also found that the appellant would not face very significant obstacles integrating in Pakistan (which is the applicable “private life” test in the Immigration Rules). Amongst other things, the judge found that he can use the qualifications and skills he acquired in the UK and receive assistance from his family.
8. The judge found in paragraph 31 that the appellant could return to Pakistan and apply for entry clearance and the medical evidence did not indicate that the sponsor would be unable to cope during the period of separation.

### **Grounds of Appeal**

9. The appellant has advanced three grounds of appeal.
10. The first ground submits that the judge failed to appropriately take account of the medical evidence about the mental health of the sponsor. It is argued that the judge failed to incorporate into his assessment of whether there would be insurmountable obstacles to family life continuing in Pakistan the medical evidence about the sponsor's mental health, including in particular the view of her GP about how relocating to Pakistan would worsen her anxiety.
11. The second ground submits that the judge failed to engage with country background evidence about the availability of mental healthcare in Pakistan. The grounds refer to articles and reports in the bundle before the First-tier Tribunal discussing the low number of psychiatrists and psychiatric hospitals in Pakistan, the stigma associated with mental health, and the high proportion of the population in Pakistan who do not receive treatment for their mental health conditions.
12. The third ground of appeal submits that it was perverse to find that the sponsor could, whilst living in Pakistan, travel to the UK to receive treatment.

### **Analysis**

#### **Ground 1: Failure to Take Appropriate Account of Medical Evidence about the Mental Health of the Sponsor**

13. There was very little evidence about the sponsor's mental health before the First-tier Tribunal. The evidence consisted of just two letters, neither of which provides a significant amount of information about her mental health.
14. The first of the two letters is a letter from Dr Rogers, the sponsor's GP, to the appellant's solicitors dated 21 May 2021. The letter states that the sponsor is receiving gynaecological care and has been referred to an ear, nose and throat doctor in relation to difficulties with swallowing and weight loss. It is stated that she has been referred to a consultant psychologist and mental health team because it is thought that severe anxiety is causing her physical symptoms. In the final (third) paragraph of the short letter Dr Rogers states:

"I would imagine that her anxiety would get worse if her husband was forced to leave the UK or if she were forced to leave with him".
15. The second letter in which the sponsor's mental health is discussed is a letter dated 7 June 2021 from consultant psychiatrist Dr Yukselen. In this letter Dr Yukselen summarises the sponsor's health as follows:

"Mrs Durani suffers from severe anxiety and low mood since the COVID infection. She feels pain whenever she tries to swallow. This increases anxiety and muscle tension, and subsequently more pain, leading to further food restriction. Fortunately, her ENT, Gastroenterology and Neurology investigations have been reassuring.

We discussed possible interventions such as medication and talking therapy. Mrs Durani is keen to try. I explained Sertraline, its effects and side effects. I shall also refer to talking space. With appropriate treatment, I hope that her anxiety will improve, so will her sore throat and swallowing.

16. I asked Mr Dhanji at the hearing if there were any other documents relevant to the sponsor's mental health. He informed me that there were not. He was also unable to identify any documents showing what medication (if any) was taken by the sponsor.
17. Mr Dhanji acknowledged that the judge referred, in paragraphs 18 - 22 of the decision, to the letters of Dr Rogers and Dr Yukselen but argued that they were not taken into account in the analysis of whether there would be insurmountable obstacles to family life continuing in Pakistan.
18. Mr Melvin's response was that the judge's reference to the medical evidence in the decision indicates that he took it into account. He also submitted that there was very little evidence before the First-tier Tribunal about the sponsor's mental health; and that there was no evidence of any ongoing treatment, whether by way of medication or therapy; and therefore there was no basis for the judge to conclude that the sponsor's mental health was a significant barrier to relocation to Pakistan.
19. I agree with Mr Melvin. The judge plainly considered and took into account the letter of Dr Rogers, because it is discussed in paragraphs 20 and 21. The judge even set out the final paragraph of that letter where Dr Rogers commented that the sponsor's anxiety is likely to increase if her husband is returned to Pakistan. The judge also clearly had regard to Dr Yukselen's letter, because this is discussed (and the contents summarised accurately) in paragraph 19. Accordingly, I do not accept that the judge erred by failing to have adequate regard to the medical evidence.

**Ground 2: Failure to Take Account of or Engage with Background Evidence About the Availability of Mental Healthcare in Pakistan**

20. Mr Dhanji argued that the appellant submitted background evidence about the inadequacy of mental healthcare provision in Pakistan and that the judge fell into error by failing to have regard to it. He submitted that the judge's finding (in paragraph 26) that the sponsor can receive intervention by way of medication and counselling if necessary in Pakistan is made without regard to the background evidence which, he argued, indicates that treatment would in fact not be available.
21. Mr Melvin argued that the judge cannot be faulted for not considering background evidence when this was not raised on the appellant's behalf at the hearing. He noted that it was not argued in the appellant's skeleton argument before the First-tier Tribunal that the sponsor would be unable to obtain mental health treatment in Pakistan. Mr Melvin also argued that as there was no evidence as to what medication and treatment (if any) the sponsor is receiving in the UK there was no reason for the judge to find that comparable medication and treatment would be unavailable in Pakistan.
22. The objective evidence that was before the First-tier Tribunal indicates that in Pakistan there is a shortage of psychiatrists and psychiatric hospitals and that there is a stigma associated with mental health; but it also indicates that some medication and treatment is available: see section 4.12 of the respondent's Country Policy and Information Note Pakistan: Medical and healthcare dated September 2020 ("the CPIN").

23. The objective evidence needs to be considered in the context of there having been very little evidence before the judge about the sponsor's mental health and no evidence about what medication (if any) she currently takes. In paragraph 26 the judge stated that the sponsor could receive some level of care and treatment - including medication and counselling - in Pakistan. That finding is consistent with the CPIN. As observed by Mr Melvin, the medical evidence before the judge did not indicate that the sponsor would require psychiatric interventions of the type that the country information indicates is unavailable in Pakistan. In these circumstances, the failure to specifically refer to the CPIN (or other objective evidence) does not amount to an error of law. In any event, even if it was erroneous to not refer to the objective evidence, any such error would be immaterial in the light of the judge's conclusion being consistent with the CPIN.

**Ground 3: Perversity of Finding that the Sponsor Could, Whilst Living in Pakistan, Travel to the UK to Receive Treatment.**

24. In paragraph 26 the judge found that the sponsor would be able to receive treatment and medication (if necessary) in Pakistan. The judge also made a finding in the alternative that the sponsor could access treatment in the UK by regular visits. The grounds submit that this alternative finding is perverse.
25. The appellant cannot succeed under this ground because the finding about returning to the UK for treatment was made in the alternative and is only relevant if the primary finding - that the sponsor would be able to receive treatment and medication in Pakistan - was unsustainable. However, for the reasons explained above (when considering ground 2), the primary finding is sustainable.

**Notice of Decision**

The appeal is dismissed. The grounds of appeal do not identify an error of law and the decision of the First-tier Tribunal stands.

No anonymity direction is made.

Signed

D. Sheridan  
Upper Tribunal Judge Sheridan

Date: 15 January 2023