IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002489

First-tier Tribunal No: HU/07272/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 October 2024

Before

UPPER TRIBUNAL JUDGE SMITH
UPPER TRIBUNAL JUDGE RUDDICK

Between

RAMANDEEP SINGH DHALIWAL

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Saini, Counsel instructed by Fountain Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on Thursday 17 October 2024

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Mulready promulgated on 22 April 2024 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 10 July 2020 refusing his protection and human rights claims made in the context of a decision to deport the Appellant to India.

2. The appeal against the Respondent's decision was initially allowed by First-tier Tribunal Judge S J Clarke by a decision promulgated on 17 May 2022 ("the First Appeal Decision"). However, by a decision issued on 16 March 2023, this Tribunal (The Honourable Mrs Justice Thornton and Upper Tribunal Judge Rimington) found an error of law in the First Appeal Decision and remitted the appeal to the First-tier Tribunal for re-determination.

3. However, the Tribunal found an error of law only in relation to the Article 3 medical claim, on which basis the appeal had been allowed by Judge Clarke. It preserved the other findings in the First Appeal Decision. Judge Clarke found that the Appellant had not rebutted the presumption under section 72 of the Nationality, Immigration and Asylum Act 2002. Accordingly, the Appellant was not entitled to the protection of the Refugee Convention and his protection claim could only succeed under the Human Rights Act 1998. The Judge dismissed that claim. As above, he allowed the appeal but only on the basis that Article 3 ECHR would be breached by deportation due to the Appellant's medical condition.

4. Following remittal, Judge Mulready dismissed the Article 3 medical claim, finding that the Appellant would be able to obtain treatment for his condition in India. That treatment would be available and accessible to him.

5. The Appellant appeals the Decision on six grounds as follows:

   Ground one: the Judge failed to give the appeal anxious scrutiny. This ground depends on and overlaps with grounds two to four.

   Ground two: the Judge failed to consider all relevant medical evidence and failed properly to understand correctly the Appellant's medical condition.

   Ground three: flowing from the errors asserted in ground two, the Appellant argues that the Judge failed properly to consider the treatment which the Appellant requires for his medical condition.

   Ground four: the Judge has made mistakes of fact as to the evidence about the Appellant's medical condition.

   Ground five: overlapping with grounds two to four, the Judge failed to provide adequate reasons for her conclusion that Article 3 would not be breached by deportation.

   Ground six: the Judge acted in a way which was procedurally irregular. This arises from an assertion that the Respondent failed to comply with directions to provide evidence about treatment for the Appellant's medical condition in India; it appears to be asserted that she bore the burden of proof as to the availability of treatment.

6. Permission to appeal was refused by First-tier Tribunal Judge Aldridge on 14 May 2024 in the following terms so far as relevant:

> "..2. The grounds are without merit. The Judge clearly and demonstrably considered all of the evidence and, properly, made findings in respect of it, including a recognition of the severity of the condition of the appellant and the expert evidence in respect of the treatment of such a condition. These findings are adequately reasoned and based on all of the evidence available to the tribunal. The judge provided explanation of the findings, in particular, in respect of the availability and affordability of treatment to the appellant. The mistakes of fact relied upon in the grounds for permission have no material effect upon the decision. The judge was entitled to make the findings and did so in a reasoned manner considering the evidence in the round.
>
> 3. The grounds contain no arguable error of law."

7. The application for permission was renewed on the same grounds to this Tribunal. Permission was granted by Upper Tribunal Judge O'Callaghan on 5 August 2024 in the following terms so far as relevant:

> "..3. I observe the reference by Judge Mulready to having had regard to all of the evidence before her, whether or not specifically referenced in her decision, at [13].
>
> 4. However, the failure to consider evidence identified at [8-11], [14] and [17-18] of the grounds of appeal, as well as erroneous reference identified at [22], are arguably material errors of law. Consequently, I consider grounds 2, 3, 4 and 5 to be arguable.
>
> 5. In the circumstances, I consider it appropriate that permission to appeal is granted on ground 6.
>
> 6. Ground 1 appears to be parasitic on the other grounds, but it is appropriate to additionally grant permission to appeal on this ground. It will be for the appellant to consider at the error of law hearing as to whether this ground of appeal advances anything in addition to the other five grounds of appeal."

8. The Respondent has not filed a Rule 24 Reply, but we did have before us a skeleton argument from Mr Melvin the content of which is taken into account in what follows.

9. The appeal therefore comes before us to determine whether there is an error of law in the Decision. If we conclude that the Decision does contain an error of law, we have to consider whether to set it aside. As there is only one issue remaining, the Decision would fall to be set aside as a whole if we find an error of law. If we set it aside, we have to go on either to re-make the decision ourselves or to remit the appeal to the First-tier Tribunal for re-making. As the appeal has already been remitted once, we would take considerable persuasion that it is appropriate to remit it again, particularly since the issues are now very narrow.

10. We had before us a voluminous hearing bundle running to 1190 pages (pdf) to which we refer hereafter as [B/xx]. Although the size of the bundle has not caused any issues due to being properly bookmarked, we make the point that many of the documents did not need to be included, relating as they do to issues on which findings have been preserved. The bundle

contains the documents relevant to the appeal before us, the Appellant's evidence and the Respondent's bundle as before the First-tier Tribunal and relevant case-law.

11. Having heard submissions from Mr Saini and Mr Melvin, we reserved our decision and indicated that we would provide that in writing which we now turn to do.

DISCUSSION

12. The Judge's findings and reasons for dismissing the appeal are relatively succinct. In order properly to consider the lengthy grounds, it is therefore appropriate to set that part of the Decision out in full:

> "30. The argument that the Appellant would not be able to obtain adequate treatment in India because there is no doctor in India with experience of this condition, is an argument undermined by the evidence of the Appellant's NHS doctor. Dr Johnson told the Appellant, in writing, twice, as long ago as 2022, that such experience was not essential for him to [be] treated successfully.
>
> 31. The NHS guidance on the condition makes clear that there is not a full understanding within the NHS about this condition, and yet the Appellant has been receiving specialist NHS treatment for it since his diagnosis in prison. This corroborates the point made by Dr Johnson, and it is also common sense – rare conditions are not successfully treated only by doctors with experience of that specific condition, but by doctors with experience in the relevant field of medicine, which in the Appellant's case, is gastroenterology.
>
> 32. There is no suggestion in the papers before me that there are no doctors in India with appropriate gastroenterology experience. The 2023 CPIN makes clear that the three medications the Appellant takes routinely, and the one he takes occasionally as necessary, are available in India, and that there are numerous hospitals, across the country, with specialist gastroenterology facilities. There are clearly doctors in India with the relevant expertise, and pharmacies in India with the relevant medications.
>
> 33. The Appellant argues that even if the relevant medics and medications are available in India in theory, they would not be available to him in practice because he would not be able to afford to pay for them.
>
> 34. In support of that position he points inter alia to the evidence of Dr Sharma. It is unclear from the papers before me what instructions and medical records Dr Sharma was provided with before he gave his opinion. I therefore place little weight on this evidence. In any event Dr Sharma's evidence that the care the Appellant requires would be *'very expensive'* is not particularly illuminating because of the lack of quantification.
>
> 35. I accept the Appellant may have to obtain at least some of his medical care from the private sector in India, and that this would be more expensive than that provided by the public sector in India. However I am not persuaded it is so expensive as to be inaccessible to him, because the Appellant would be able to work to support himself in India. He is a qualified

civil engineer, educated to degree level, with years of work experience. He currently has a full-time job with considerable responsibility, which has been the case for almost three years now. I accept he has a serious medical condition, and at times he requires time off work in connection with this. I accept he may not in India be permitted to have paid time off work for medical appointments or when unwell, but there are a great many people in India in the same position, who are able to access medical care and support themselves through working for a living. The Appellant, as a highly educated professional person with years of work experience in positions of responsibility, is well placed to do this.

36. I accept Ms Brar's evidence that she would not provide the Appellant with any more financial support were he to return to India without her. She has given him many years of her life, providing him with emotional and financial support throughout his years in prison, providing him with financial support through these lengthy immigration proceedings, whilst also paying for their home, and undertaking caring responsibilities for her mother. I accept she is unlikely to have very much money left over after she has met all of her own costs. I accept that even if she did have money left over, she would have little reason to send this to the Appellant, given his and her evidence that were he to return to India their relationship would be over. However, I am not convinced this is fatal to the Appellant's ability to access medical care, because he can work and support himself.

37. Having considered all of the evidence in the round, I am not satisfied that substantial grounds have been shown for believing that the Appellant would face a real risk, on account of the absence of appropriate treatment, or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his state of health resulting in intense suffering, or to a significant reductio in life expectancy."

Ground six

13. We begin our consideration of the grounds with ground six as that is freestanding and the error asserted does not overlap with the other grounds. That said, if we were to accept that there was some procedural irregularity in the Judge's conduct of the appeal, that is likely to infect the Decision as a whole and that is further reason to take this ground first.

14. However, we do not accept that there is any procedural irregularity made out by the grounds.

15. First, we are unable to find evidence to support the factual premise in this ground that the Respondent failed to comply with directions given as to evidence. True it is that when the appeal was remitted to the First-tier Tribunal the Respondent was directed to provide a skeleton argument setting out her position in relation to the Article 3 medical issue ([21] of the Upper Tribunal decision at [B/84]). The Respondent was also directed following remittal to file and serve any additional evidence and a review of her position. There is no such skeleton argument or review in the bundle. However, there is no specific direction that the Respondent set out her position in relation to the availability of treatment for the Appellant in India. Even if there were, for the reasons which follow, any such failure

would be immaterial bearing in mind the way in which the burden of proof operates in Article 3 medical cases.

16. Second, we observe that the Respondent had in any event provided evidence in the form of the Country Policy and Information Note entitled "Medical and Healthcare Provision" dated April 2023 ("the 2023 CPIN"). That is referred to at [11] of the Decision as setting out the Respondent's position and the substance of it is referred to at [28] of the Decision. We accept that this appears to have been served by the Home Office on the day of the hearing (see email at [B/1115]). However, this is a published document and therefore both parties ought to have had prior access to it. In any event, the Appellant did not apply for an adjournment or request further time to deal with this document (if the ground is intended to suggest that the Appellant was prejudiced by its late production).

17. Third, even if the Appellant were right about the factual premise of this ground, it does not amount to a procedural irregularity. The Appellant appears to suggest by this ground that the burden of proving the availability of treatment lies with the Respondent. Indeed, Mr Saini submitted that the error arose because, if the Judge and Respondent had misunderstood the nature of the Appellant's medical condition and treatment of it, then that would have an impact on the assurances which the Respondent provided and that therefore this ground was central. That is to misunderstand the burden of proof for the reasons which follow.

18. Reliance is placed in the grounds on the decision of the European Court of Human Rights in Savran v Denmark (Application no: 57467/15) ("Savran") ([B/703-80]). However, what is said in Savran merely reiterates what was said by the Grand Chamber in Paposhvili v Belgium (Application no: 41738/10) ("Paposhvili") ([B/819-869]). The guidance given in Paposhvili in turn was considered by the Supreme Court in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. The Supreme Court's judgment was considered by this Tribunal in AM (Article 3: Health Cases Zimbabwe) [2022] UKUT 00131 (IAC) ("AM (Zimbabwe)") in which guidance as to burdens and standards of proof in Article 3 medical cases was given as follows:

> "1. In Article 3 health cases two questions in relation to the initial threshold test emerge from the recent authorities of AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17 and Savran v Denmark (application no. 57467/15):
>
> (1) Has the person (P) discharged the burden of establishing that he or she is 'a seriously ill person'?
>
> (2) Has P adduced evidence 'capable of demonstrating' that 'substantial grounds have been shown for believing' that as 'a seriously ill person', he or she 'would face a real risk':
>
> [i] 'on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment,

[ii] of being exposed

[a] to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering, or

[b] to a significant reduction in life expectancy'?

2. The first question is relatively straightforward issue and will generally require clear and cogent medical evidence from treating physicians in the UK.

3. The second question is multi-layered. In relation to (2)[ii][a] above, it is insufficient for P to merely establish that his or her condition will worsen upon removal or that there would be serious and detrimental effects. What is required is 'intense suffering'. The nature and extent of the evidence that is necessary will depend on the particular facts of the case. Generally speaking, whilst medical experts based in the UK may be able to assist in this assessment, many cases are likely to turn on the availability of and access to treatment in the receiving state. Such evidence is more likely to be found in reports by reputable organisations and/or clinicians and/or country experts with contemporary knowledge of or expertise in medical treatment and related country conditions in the receiving state. Clinicians directly involved in providing relevant treatment and services in the country of return and with knowledge of treatment options in the public and private sectors, are likely to be particularly helpful.

4. It is only after the threshold test has been met and thus Article 3 is applicable, that the returning state's obligations summarised at [130] of Savran become of relevance - see [135] of Savran."

19. As the guidance in AM (Zimbabwe) makes clear, the burden of establishing a prima facie case of breach of Article 3 ECHR in a medical case (as in any other Article 3 claim) lies with the Appellant. As the Supreme Court made clear in AM (Zimbabwe), the threshold is a high one (see in particular [32] of the judgment at [B/816]).

20. We are satisfied that this is the approach which the Judge adopted. Subject to any errors being established by the other grounds, she took into account evidence provided by both parties when reaching her conclusion, which she said at [37] of the Decision was based on all of the evidence considered in the round. Put another way, it is only if the Appellant had satisfied his burden of establishing a prima facie case of an Article 3 breach that the issue of assurances arises. The Judge was not satisfied that he had established his case. We do not accept Mr Saini's submission that the Judge accepted that the Appellant had established his case. It is clear from what is said at [37] of the Decision that she did not accept this.

21. Accordingly, as we indicated to Mr Saini in the course of his submissions, if there is an error it is not in the approach taken by the Judge but in her understanding and application of the facts and evidence. As such, the Appellant's challenge to the Decision turns on the other grounds and not ground six.

22. For the foregoing reasons, we are satisfied that no error is disclosed by the Appellant's ground six.

Ground two

23. As Judge O'Callaghan noted when granting permission, ground one appears to be overarching and adds little if anything to the remaining grounds. For that reason, it is appropriate to leave it to last. Further, the grant of permission is based predominantly on grounds two to four. We therefore deal with these next.

24. The errors asserted in ground two turn on the evidence of Dr Ian Johnston (referred to throughout the grounds and the Decision as "Dr Johnson" but nothing turns on that) and the Judge's understanding of that evidence about the treatment which the Appellant is receiving in the UK and which he requires on return to India. It is important first to summarise what this evidence shows as to the Appellant's condition and treatment of it.

25. Dr Johnston's evidence begins in April 2021 when he first began to treat the Appellant's Eosinophilic Gastroenteritis (his 'condition'). In an email dated 22 April 2021 ([B/299]), he explained the discovery of the Appellant's condition. The Appellant had been tested for "infectious causes", but none had been discovered. The Appellant's condition was at the time being treated by a course of steroids which would be followed by blood tests. By July 2021, Dr Johnston informed the Appellant's GP that the Appellant had completed two courses of steroids, but he was concerned about a relapse, which he thought might be triggered by a dietary allergy ([B300-301]).

26. In September 2021, Dr Johnston provided evidence to the Appellant's then solicitors ([B/304-5]). He said that the condition was treatable with a combination of "immunosuppressive drugs" and exclusion of some foods coupled with ongoing monitoring and treatment which may last for months if not years. He would require access to medical services such as "MRI, CT, endoscopy" and "doctors from other specialities", as well as care from a gastroenterologist and regular blood tests "up to 2 weekly". Continuity of care was said to be important and a break in care would be "detrimental to his health". However, Dr Johnston said that care could be provided by another gastroenterologist in the UK or even abroad "so long as there are no significant breaks in his follow-up and so long as there is access to radiological investigations, endoscopy and other specialist services including gastroenterologist and immunology". If such services were not accessible "then his care would be adversely affected."

27. In a letter dated 19 October 2021 ([B/310-311]), Dr Johnston reported to the Appellant's GP following the completion of the third course of steroids. He indicated that the Appellant was likely to require "a long-term medication" to prevent the need for further steroids. Following results of blood tests, he was seen by a specialist dietician to advise on foods which

he might need to eliminate ([B/313-315]). He was then prescribed medication by Dr Johnston ([B/316]).

28. The Appellant's grounds focus on evidence provided by Dr Johnston in 2022 at [B/319-320]) and comparison of what is there said about the Appellant's condition and treatment of it with Dr Johnston's email dated 31 January 2024 ([B/368]).

29. In an email dated 31 January 2022, Dr Johnston explains that the Appellant's condition "could potentially be life-threatening if he does not receive ongoing specialist gastroenterology and immunological care in a centre where access to up-to-date interventions and radiological procedures are available." However, asked about treatment in India and whilst explaining that he is not an expert on what is available in India, Dr Johnson said that the Appellant's condition "is a rare disease and as such it would not be unusual for any particular gastroenterologist not to have personally come across it before". He would however "expect any fully qualified gastroenterologist with access to modern facilities, investigation and treatment to be able to manage [the Appellant's] condition". He goes on to say that whilst the Appellant's condition might prove fatal if not properly treated, and management of the condition was "crucial", a specialist "would not necessarily be expected to have prior experience of the disease". Whilst the condition would not be cured, it could be "successfully managed through a combination of dietary therapy and medications." The underlying cause is said to be "related most likely to food allergies" and although allergic reactions could be "severe or life-threatening in any patient, [he] would not expect this condition to particularly change their risk of this."

30. The medical evidence indicates that the Appellant's appointment with Dr Johnston following that in October 2021 was in May 2022 ([B/323-324]). At that time the Appellant did not need any change in medication or further courses of steroids. He was to be seen again "in a few months' time". It appears that his next appointment for gastroenterology was in November 2022 ([B/328] and then September 2023 ([B/331] (although there are in the period other appointments at roughly nine-monthly intervals with the dermatology department ([B/325-326]). The Appellant's prescriptions are detailed at [B/360-363].

31. There are no further reports from Dr Johnston following the Appellant's appointments. There is however an email exchange between Dr Johnston and the Appellant's current solicitors dated January 2024 at [B/366-373].

32. Although that exchange largely repeats what was said in 2022, Mr Saini focussed in his submissions on what he said was a crucial change in treatment. At [B/374-376], a letter from Dr John Reed, Consultant Dermatologist, dated 24 January 2024 indicates that the Appellant's condition was unlikely to be caused by allergic reactions and more likely to be associated with "autoimmunity". The email from Dr Johnston which followed repeated the consultant's earlier indication that the Appellant

requires supervision by a specialist in gastroenterology and access to specialist services. The management of the condition would be monitoring and use of systemic steroids (which was the treatment used at the outset). However, Mr Saini focussed on the future treatment. Dr Johnston said that the Appellant was "likely to require more advanced immune suppressant therapy in the next few months in the form of immunomodulators plus or minus biologic anti TNF drugs".

33. Mr Saini suggested that this was a significant change in treatment which the Judge had not taken into account. Although this email came only days before the hearing before Judge Mulready and although Mr Saini acknowledged that the consultant had not begun the changed treatment at that stage, he submitted that the Judge should have taken into account the change in treatment envisaged as at date of hearing. She would not have been required to speculate as to what that treatment would be. Mr Saini also suggested that this treatment being "advanced" meant that it was more specialist in nature and therefore less likely to be available in India.

34. We do not accept Mr Saini's submission that the Judge's failure to take the 2024 email into account undermines her conclusions about availability of treatment. This is for several reasons. We acknowledge that the Judge did not refer to that email, focussing instead on Dr Johnston's email from 2022. She dealt with that evidence at [25] of the Decision as follows:

> "In an email dated 20 January 2022, Dr Johnson, an NHS consultant gastroenterologist who was then treating the Appellant, set out the Appellant's condition *'is a rare disease and as such it would not be unusual for any particular gastroenterologist to not have personally come across it before. I would however expect any fully qualified gastroenterologist with access to modern facilities, investigation and treatment to be able to manage your condition, regardless of their previous experience in the disease.'* Dr Johnson set out that '*management of the condition by a gastroenterologist is crucial …this specialist would not necessarily be expected to have prior experience in this disease. I would not expect eosinophilic entretitis to be cured but it can be successfully managed through a combination of dietary therapy and medications.'*

35. We accept that, based on that evidence, the Judge thought that the Appellant's condition would be managed by, inter alia, dietary therapy. Although the Appellant himself said in evidence (recorded at [14] of the Decision) that he continued to attend appointments with Dr Reed, we accept that the evidence of Dr Johnston in 2024 was that dietary allergies were unlikely to be the cause of the Appellant's condition. However, the evidence of Dr Johnston in 2022 and prior to that was also that the condition was managed by medication including immunosuppressant drugs. The consultant also said in 2022, as the Judge recognised, that the Appellant needed specialist supervision and access to specialist services. That is implicit in the recording of Dr Johnston's evidence at [25] and the reference to "specialist gastroenterology facilities" and "doctors with

relevant expertise" in the findings about necessary treatment at [32] of the Decision.

36. We are quite unable to accept Mr Saini's submission that the reference to "advanced" therapy means that such therapy is unusual or particularly specialised. Dr Johnston does not suggest that it is other than a normal course of treatment. We have no evidence about the drugs which were proposed beyond that they were to be "immunomodulators plus or minus biologic anti TNF drugs". Neither we nor the Judge were provided with evidence about what those drugs are nor, crucially, that they are not available in India.

37. That brings us back to the point which we made when dealing with ground six. The burden of establishing a prima facie case of a breach of Article 3 lies with the Appellant. This means that in the first instance it is for him to provide evidence that the treatment he is receiving or is envisaged (or similar treatment which would be effective to treat his condition) is not available or accessible in India. Absent any evidence that the course of treatment which the Appellant might receive within a few months is not available or accessible in India, the Appellant could not meet that burden. He has still not provided evidence about what the proposed treatment entails nor even that this treatment has started, let alone any evidence that the treatment would not be available or accessible in India.

38. For those reasons, we are satisfied that the Judge's failure to refer expressly to the 2024 email does not undermine the Judge's summary of Dr Johnston's evidence nor her findings about the treatment which the Appellant requires. Nor do we consider that it can be said that the Judge thought that the Appellant's condition would be managed by medication alone. The Judge refers at [25] of the Decision to the need for access to investigation and treatment as set out in Dr Johnston's email of 2022. She sets out at [28] of the Decision the evidence about the gastroenterology services available in India (not confined to medication). Crucially, in her reasoning at [32] of the Decision she makes reference not only to the Appellant's medications being available but also to the "numerous hospitals, across the country, with specialist gastroenterology facilities". That is emphasised in the following sentence where she refers to pharmacies in India having access to "relevant medications" but also to doctors "with the relevant expertise".

39. For those reasons, the Appellant's second ground is not made out.

Ground three

40. The focus of the third ground is the Judge's consideration of the evidence about treatment available and accessible in India. As we pointed out to Mr Saini, the Judge accepted that the Appellant is seriously ill and requires treatment which is the same as or similarly effective as that provided in the UK. As the Judge records at [33], the Appellant's case is that, even if such treatment is available to him, it would not be accessible because he

could not afford it. The Judge was therefore concerned with availability of and accessibility to such treatment.

41. Dealing first with availability, Dr Johnston did not give any opinion about availability or cost of treatment in India for the Appellant's condition (contrary to what is suggested at [13] of the grounds). Dr Johnston says expressly at [B/320] in his 2022 email that he is "not an expert in health care provision in India" but goes on to say that management of the Appellant's condition could be carried out by a gastroenterologist with no prior experience of the Appellant's particular condition, the inference being that Dr Johnston considered that treatment ought to be available provided there are specialist gastroenterologists in India and that they have access to specialist facilities. We have already dealt, when looking at ground two, with the Judge's analysis of Dr Johnston's evidence about treatment which is required.

42. The Appellant's evidence before Judge Mulready as to treatment in India begins with a letter from Sharma Hospital with transcript ([B/553-554]. The letter is written by a Dr Ashok Sharma who is the "family physician" of the Appellant's family. He does not say that he has any particular expertise in gastroenterology. He says that the Appellant's condition is "very rare" which is consistent with Dr Johnston's evidence. He says that he has never come across such a case (again consistent with Dr Johnston's evidence that even many specialist gastroenterologists will not have prior experience of treating the condition). He says that "[d]efinitely, Ramandeep Singh Dhaliwal and patients of this type of disease require super specialize gastro treatment at Tertiary Care Centre, which would be very expensive". That is not consistent with Dr Johnston's evidence that, provided a gastroenterologist had access to modern facilities, investigations and treatment, a lack of expertise in the Appellant's specific condition would not be necessary.

43. In any event, the Judge dealt with Dr Sharma's evidence at [34] of the Decision (which needs to be read in the context also of [33] of the Decision) as set out above. In essence, the Judge gave little weight to Dr Sharma's evidence due to the lack of information as to the instructions he was given and the medical evidence he had available to him. In any event as she pointed out there is no quantification of what is meant by "very expensive".

44. Although Mr Saini did not take us to it, it appears that the only other evidence which was produced by the Appellant before Judge Mulready in relation to availability of medical treatment in India is as follows:

[B/632] – link to websites which are summarised by someone as suggesting that treatment in South India is not funded, and that medical experts are not based in Punjab State, the closest being Delhi. The first contains no such information. The second is not accessible to us.

[B/633] – a document entitled "Potential Standard Diagnostic Costs – India" (to which we referred in the course of Mr Saini's submissions). The costs are said to be based on 2014-15 prices and the website from which those are taken is not accessible. There is no indication therefore of the basis for the costs there stated. It is perhaps worthy of note that the document appears to show that the cost over 12 months would be around £7,500.

45. In light of the deficiencies in the Appellant's evidence, perhaps unsurprisingly, Judge Mulready focussed on the sourced evidence in the 2023 CPIN as set out at [28] of the Decision. It is the Judge's treatment of that evidence which is criticised at [12] and [13] of the grounds. That evidence we accept does not focus on cost but does show an availability of treatment at a number of hospitals in India.

46. Mr Saini did not focus on [12] and [13] of the grounds. He was right not to do so. We have already dealt with the criticism that the Judge only considered the need for medication when looking at ground two. We do not understand the suggestion at [13] of the grounds that the hospitals referred to in the 2023 CPIN are all in southern India. The 2023 CPIN is at [B/1116-1190]. At [B/1153-1154] appears a list of specific hospitals which provide gastroenterological care. Those cover a range of cities including Delhi, New Delhi, Mumbai, Kolkata, Bangalore, Hyderabad and at least one facility which operates in a number of cities across India. There is also separate reference to CARE hospitals which run sixteen healthcare facilities and the 2023 CPIN refers to having specialist gastroenterological consultants and facilities. The Judge set out that evidence at [28] of the Decision and was entitled to rely on it in the absence of other evidence.

47. We accept that the Appellant did provide some evidence about treatment in India in his supplementary witness statement ([§22] at [B/148-149]). However, that does not say what is suggested at [13] of the grounds that the Appellant had contacted at least two hospitals with no response. It says that the Appellant had researched what was available and none was available in his home state, meaning that he would have to travel to another area of India which he says would be unaffordable.

48. The Judge referred to the document produced by the Appellant in relation to costs at [19] of the Decision as follows:

> "He said that the costs of various medical procedures he would need in India would amount to approximately £7,519.93 per year if he used government provided medical services, and approximately four times that if he used private providers, which he would need to because the government providers had long waiting lists, and these did not include travelling costs. He said he did not know what part of India he would need to travel to for the treatment."

49. The Judge also referred at [20] of the Decision to the Appellant's oral evidence that he had "contacted more than 20 doctors in India, and none of them had heard of his condition." The Appellant claimed that he had spoken to them on the phone, and they confirmed that they had access to

facilities to perform, for example, endoscopies but they had not treated his condition before.

50. Those references appear to take into account both the Appellant's own evidence about availability and affordability and the document to which we have referred about cost ([B/633]). However, of course, the Judge also had regard to the evidence of Dr Johnston that what is required is the services of a specialist gastroenterologist whether or not one familiar with the Appellant's very rare condition.

51. The Appellant also relies in his grounds on the report of Mr Shantanu Mohan Puri at [B/198-281]. It is the assertion that the Judge erred by failing to take this evidence into account which formed the main part of Mr Saini's submissions on ground three.

52. As appears from the report itself, Mr Puri is an advocate in the Indian judicial system. It is not suggested that he has any expert knowledge of healthcare provision in India. Mr Saini accepted that was so. As Mr Puri himself says at [2] of the report ([B/201] he is not a medical expert and therefore cannot comment on treatment for the Appellant's condition. He says therefore that he has "limited [his] opinion to only the state of Public and Private Healthcare in India". In relation to standards of care, he makes clear that he can only rely on information in the public domain and his personal experience. He is not an expert and therefore his report on that aspect cannot carry weight as such particularly since the Judge had available to her the 2023 CPIN which was also based on research of information in the public domain.

53. It is suggested at [17] of the grounds that Mr Puri confirms that the Appellant would not be able to access healthcare in India "in his current situation" because "only 10% of the extremely poor population can access such government medical care and the rest of the population will have to pay privately for this treatment." However, the Appellant is a qualified civil engineer. The issue is therefore whether the Appellant could afford to pay privately for his treatment.

54. We acknowledge that Mr Puri paints a somewhat bleak picture of the state of the Indian healthcare system referring to reports of shortages of doctors and specialists. He says that the health system all but collapsed following Covid-19. We observe however that this is not dissimilar to the position in many countries following the pandemic.

55. In any event, if what is relied upon by the Appellant in Mr Puri's report is the reference to the lack of publicly funded treatment for the Appellant's condition, we consider that any error to refer to the report is immaterial because the Judge's finding at [35] of the Decision is that the Appellant would be able to fund his treatment.

56. We cannot accept Mr Saini's submission that the Judge's finding that "the Appellant may have to obtain at least some of his medical care from the private sector" means that the Judge found that some of it would be

provided by the public sector. We consider that what the Judge there meant was that the evidence showed that the Appellant may have to rely on the private sector for some or even all of his treatment but went on to find that he would be able to work as a qualified professional in order to afford that treatment.

57. We also observe that Mr Puri's knowledge of the Appellant's condition and of the treatment required for it appears to be limited. He appears to think that the Appellant requires "constant care and treatment" and extremely specialised treatment, whereas the evidence is that the Appellant has infrequent consultations with Dr Johnston at irregular intervals of many months (see the Appellant's own evidence reported at [14] of the Decision) and Dr Johnston has made clear that a specialist gastroenterologist would be able to manage the Appellant's condition even with no prior experience of his specific illness.

58. We accept that the Judge did not refer expressly to Mr Puri's report. However, bearing in mind Mr Puri's self-professed lack of expertise in relation to the issue of healthcare and the cost thereof, and that his knowledge of the Appellant's condition and the treatment thereof also appears incomplete, we are satisfied that, even if the Judge had considered this evidence (which we accept she did not) it would not have made any difference to the outcome.

59. The Judge had more objective background evidence in the form of the 2023 CPIN on which she was entitled to rely. In relation to cost, she accepted at [35] of the Decision that the Appellant might have to rely on private healthcare provision which would be more expensive than public sector provision. It is now in the grounds that the Judge failed to have regard to the fact that a civil engineer earns less in India than in the UK, but we can find no evidence put forward about the Appellant's potential earnings in India. The Judge was therefore entitled to conclude as she did at [35] and [36] of the Decision that the Appellant would be able to afford the treatment available.

60. Finally, in relation to this ground, the Appellant suggests that his treatment is now being changed (presumably in the way suggested in Dr Johnston's 2024 email). He says that he seeks permission to adduce further medical evidence about this. However, that is not with the grounds nor in the bundle. There is no application under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008 to adduce any further evidence.

61. For the foregoing reasons, we are satisfied that any failure by the Judge to refer to Mr Puri's report makes no difference to her reasons, or the conclusion reached as to access to medical care. The Judge was entitled to rely on the 2023 CPIN in relation to availability of treatment in India. The Judge was entitled to find that the Appellant would be able to fund his treatment privately taking into account all the evidence she had about cost.

62. We are therefore satisfied that the Appellant's third ground does not disclose any material error of law.

Ground four

63. This ground focusses on what are said to be three mistakes of fact. Mr Saini did not make extensive submissions about this ground and focussed largely on the second so far as he did make submissions.

64. Dealing with the first and third asserted mistakes, those focus on the oral evidence given by the Appellant and his partner, Ms Brar.

65. At [14] of the Decision when setting out the Appellant's oral evidence, the Judge says that the evidence was that the Appellant had been admitted to hospital in February 2021 "with an infection". It is submitted in the grounds that the Appellant was admitted as an emergency because he was coughing up blood and experiencing severe stomach pains, the inference being that the Judge misunderstood the nature and seriousness of the Appellant's condition.

66. The third error relates to evidence which the Judge said had been given by the Appellant's partner about the Appellant's "haemoglobin levels". This appears at [22] of the Decision where the Judge records the oral evidence of Ms Brar.

67. It is difficult to know whether these are mistakes of fact at all as [14] and [22] of the Decision are said to record the Appellant's and Ms Brar's oral evidence. We have no material setting out the oral evidence given at the hearing. No transcript of that hearing has been sought or provided to us.

68. Further, the Appellant's witness statement ([§13] at [B/137]) says only that he was hospitalised on 7 February 2021 and again on 15 February 2021 before being discharged on 24 February 2021. It says nothing about his symptoms on those occasions.

69. Dr Johnston's letters ([B/310] and [B/323]) refer to an admission in January 2021 with abdominal pain and vomiting. The Appellant's medical records at [B/352-4] refer to the Appellant in February 2021 having several illnesses but do not provide any information about his symptoms. We have therefore been unable to identify from what evidence the Judge was expected to glean a fuller description of the Appellant's symptoms at that time.

70. In any event, we fail to understand what relevance this has to the case. The Judge (and Respondent) accept that due to his current condition the Appellant is "seriously ill". Any error in recognising the full extent of the symptoms at the outset of the illness is therefore not material (if error it is).

71. We have no evidence to show that Ms Brar did not say what the Judge records she said. It appears odd that the Judge should make such a

specific reference if that evidence were not given. As the Judge points out, Ms Brar is not a medical professional, and she has therefore placed no weight on this evidence. As such, it is difficult to see how this error (if error it is) could be even marginally relevant or material.

72. In relation to the second error, at [27] of the Decision, the Judge is said to have erred by referring to an entirely different illness (Eosinophilic Esophagitis – EoE – rather than Eosinophilic Gastroenteritis). The reference in this paragraph is to a document provided by the Appellant ([B/612-614]) which is a research paper seeking to draw a parallel or distinction between Eosinophilic Gastroenteritis (EGID) and EoE. It may well be that the Judge misunderstood the relevance of the evidence. However, much of what the Judge says when quoting from the paper on EoEs applies equally to EGIDs. The condition is lifelong and may involve changes in diet (as the Appellant's referral to a dietician in the course of his treatment shows) or medication to treat flare-ups (as mentioned in Dr Johnston's evidence). It cannot therefore be said that the Judge has misunderstood either the nature or seriousness of the Appellant's condition or the treatment for it. Her apparent mis-recording of the evidence has no bearing on her findings.

73. For those reasons, even if the Judge has erred (and we accept she may be shown to have done at least in relation to the second mistake pleaded), none of those errors could be material.

74. Ground four does not therefore disclose any material error of law.

Ground Five

75. Ground five is something of a "catch all" ground which seeks to draw together the errors pleaded in grounds two to four. Mr Saini did not focus on this in his submissions, and we understood him to accept that it crosses over with grounds two to four.

76. It is suggested that the Judge "misunderstood the Appellant's condition and diagnosis, failed to understand the complexity, failed to consider the severity of his symptoms, failed to consider, and address the country expert report and the recent emails from Dr Johnson [sic] and thereby failed to provide adequate reasons for arriving at her decision at [37]".

77. We have considered the errors pleaded at grounds two to four and have found no errors or none that could make any difference to the Judge's reasoning or conclusion. It follows that we also reject this ground which depends on those errors.

78. Ground five is not made out.

Ground one

79. Similarly, as Judge O'Callaghan noted when granting permission, this ground "appears to be parasitic on the other grounds". Mr Saini accepted that this ground was a "makeweight".

80. We do not accept that there is any failure to give the Appellant's case anxious scrutiny because the examples of this relied upon are those pleaded at grounds two to five and we have rejected those grounds.

81. Accordingly, ground one also is not made out.

CONCLUSION

82. For the foregoing reasons, we are satisfied that the Appellant's grounds do not disclose any error of law. We therefore uphold the Decision with the consequence that the Appellant's appeal is dismissed on Article 3 grounds. The Appellant's appeal having been dismissed on protection and other human rights grounds by the decision of First-tier Tribunal Judge S J Clarke promulgated on 17 May 2022 and those findings having been preserved, the Appellant's appeal is now dismissed in its entirety.

NOTICE OF DECISION

The Decision of First tier Tribunal Judge Mulready promulgated on 22 April 2024 did not involve the making of an error of law. We therefore uphold that decision with the consequence that the Appellant's appeal is dismissed on Article 3 grounds. The Appellant's appeal on protection and other human rights grounds having been dismissed by the decision of First-tier Tribunal Judge S J Clarke promulgated on 17 May 2022 and those findings having been preserved by this Tribunal, the Appellant's appeal is now dismissed in its entirety.

L K Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 October 2024