



Appellant's appeal against the decision to refuse his human rights claim dated 24 December 2019 was dismissed.

3. The Appellant is a national of Pakistan, who claims to have entered the United Kingdom on 1 January 2011, although entry clearance was granted to him as a visitor between 21 February 2011 and 21 August 2011. Since then, the Appellant has remained unlawfully in the United Kingdom, making two applications for leave to remain on human rights grounds, the first on 1 July 2013 which was refused on 5 August 2013 and most recently on 24 September 2019, the refusal of which is the subject of this appeal. This application was made on the basis of the Appellant's private life in the United Kingdom and on the basis of his medical conditions.
4. The Respondent refused the application the basis that the Appellant did not meet the requirements for a grant of leave to remain under paragraph 276ADE of the Immigration Rules, in particular because there were no very significant obstacles to his reintegration in Pakistan. The Appellant had lived in Pakistan to the age of 48, he retained knowledge of life and culture there, he would be able to find employment, his wife and children as well as family members were in Pakistan and medical treatment would be available to him there. The Respondent noted that the Appellant claimed that he had fled Pakistan in 2011 following a fight as a political event, but it was noted that he had not made an application for asylum in the United Kingdom. In relation to his medical claim, the Respondent noted the lack of medical evidence submitted with the application and although a psychiatric report had been provided, it was undated, not signed and not on headed letter paper and was therefore not given any weight. In any event, the Appellant's medical conditions could not meet the high threshold for breach of Article 3 and medical treatment was available for his claimed conditions.
5. Judge Mehta dismissed the appeal in a decision promulgated on 23 April 2020 on all grounds. The First-tier Tribunal accepted that the Appellant was a vulnerable witness and therefore applied the Joint Presidential Guidance Note No 2 of 2010: 'Child, vulnerable adult and sensitive appellant guidance'. In relation to the Appellant's private life claim, the First-tier Tribunal found that there were no very significant obstacles to his reintegration on return to Pakistan, on the basis that he has spent the majority of his life there, speaks Urdu, could re-establish contact with his family members and any financial support received in the United Kingdom could continue. Overall, the Appellant's removal would not be a disproportionate interference with his right to respect for private life.
6. The First-tier Tribunal also dismissed the Appellant's appeal on medical grounds under Article 3 of the European Convention on Human Rights on the basis that there was no real risk of suicide on return and the Appellant's claim did not otherwise meet the high threshold applicable to such cases. Further there was no credible evidence of any subjective or objective fear of risk of persecution on return to Pakistan and the Appellant's family members would be protective factors on return.

## **The appeal**

7. The Appellant appeals on two grounds as follows. First, that the First-tier Tribunal materially erred in law when considering whether there were very significant obstacles to the Appellant's reintegration to Pakistan under paragraph 276ADE of the Immigration Rules, failed to consider the Appellant's physical and mental health and therefore failed to consider the cumulative effect of all of his circumstances. Secondly, that the First-tier Tribunal materially erred in law when undertaking the proportionality balancing exercise for the purposes of Article 8 of the European Convention on Human Rights, by failing to take into account the Appellant's physical and mental health; that the Appellant will be deprived of adequate treatment on return; his health conditions will worsen; and he will face ostracization from society due to his mental illness.
8. At the oral hearing, Ms Childs relied on the written grounds of appeal, emphasising that the Appellant had expressly relied on both his physical and mental health problems as very significant obstacles to his reintegration in Pakistan and as part of his private life for the purposes of Article 8 of the European Convention on Human Rights; which, for the purposes of both grounds of appeal, the First-tier Tribunal simply failed to take into account. In essence, the same submissions were made in relation to both grounds of appeal, albeit within the context of different legal provisions.
9. The evidence in relation to the Appellant's health before the First-tier Tribunal comprised of a medico-legal report by Dr John Babalola dated 3 September 2019 and a photocopy of a number of prescriptions. Counsel for the Appellant confirmed that there was no further medical evidence, including no evidence of any formal diagnosis of any of the Appellant's claimed physical health conditions (these are only mentioned in Dr Babalola's report, but it is not expressly stated whether he has seen any of the Appellant's medical records relating to these or at all), no evidence of the Appellant receiving any treatment for any of his conditions, nor of what treatment he required in the future (save for the reference in Dr Babalola's report for the need for psychotropic treatment), no evidence of the impact of the Appellant's physical or mental health on his day-to-day living and no explanation of what the medication on the prescription forms was for.
10. Ms Childs submitted that although there was what could be considered a lack of medical evidence, there was sufficient information evidence before the First-tier Tribunal to enable it to assess the Appellant's mental health in particular and to make findings on his Article 3 claim expressly on that basis. The fact that the claim failed under Article 3 does not prohibit these factors been taken into account under Article 8 and if the Appellant's mental and physical health had been considered by the First-tier Tribunal, it may have come to a different conclusion on this part of the appeal. In particular, there was evidence before the First-tier Tribunal of the

Appellant being supported in the United Kingdom by friends, one of whom gave evidence before the First-tier Tribunal of providing the Appellant with daily support; further there was evidence of insufficient and inadequate mental health provision in Pakistan and of stigma towards those suffering from poor mental health. Ms Childs also submitted that the First-tier Tribunal failed to provide adequate reasons as to why the Appellant would have sufficient family support on return, in particular to assist his ability to access treatment and to provide him with emotional support.

11. On a separate point, not expressly raised in the written grounds of appeal, Ms Child's submitted that the First-tier Tribunal failed to consider the limited flexibility available within section 117B of the Nationality, Immigration and Asylum Act 2002 to attach more than 'little weight' to the Appellant's private life established at a time when he was in the United Kingdom unlawfully.
12. On behalf of the Respondent, Mr Tan submitted that whilst on its face, the First-tier Tribunal fails to consider the Appellant's mental and physical health as part of its assessment of whether there were very significant obstacles to the Appellant's reintegration in Pakistan under paragraph 276ADE of the Immigration Rules and for the purposes of its proportionality assessment under Article 8; this failure could not have been material to the outcome of the appeal.
13. Mr Tan relied upon the findings made by the First-tier Tribunal on Article 3 of the European Convention on Human Rights, which followed detailed consideration of the limited medical evidence which was available. Within those findings, the First-tier Tribunal found that any risk of suicide was only in the context of a claimed risk on return to Pakistan, however this was not credible and it was found that there was neither a subjective nor objective fear of persecution on return for the reasons claimed. There was further an express finding that the Appellant would be able to access medical treatment and that he would have family support on return to Pakistan, a finding with clear reasons as to why the Appellant's claim not to be in touch with them or able to re-establish contact, was rejected. The Appellant has not challenged any of these findings, including that he would have access to medical treatment. The single article relied upon by the Appellant as to the inadequacy or inaccessibility of mental health treatment in the Pakistan was at best weak evidence in comparison to that set out within the Respondent's reasons for refusal letter, which outlined medical facilities available for both the Appellant's physical and mental health needs.
14. Overall, the Respondent relies on the lack of any detailed evidence as to the Appellant's health or its impact on his day-to-day life either in the United Kingdom or likely impact upon him on return to Pakistan, such that even if express consideration had been given to these factors within the context of paragraph 276ADE of the Immigration Rules and/or Article 8 of the European Convention on Human Rights, the appeal would inevitably have been dismissed.

## **Findings and reasons**

15. There is no dispute between the parties that the First-tier Tribunal did not expressly take into account the Appellant's physical or mental health, individually or cumulatively together with his wider circumstances when making findings on his private life claim under Article 8 of the European Convention on Human Rights. The findings of fact on this aspect of the appeal, including whether he could satisfy the requirements of the Immigration Rules, are contained in paragraphs 30 to 47 of the decision, which do not contain a single reference to the Appellant's health, which is considered only for the purposes of the Article 3 claim. It is clear that the Appellant had specifically relied upon poor physical and mental health as an obstacle to reintegration in Pakistan and it was an error of law for the First-tier Tribunal not to expressly deal with this aspect of the claim or make findings on it in the context of Article 8. However, the real issue in this appeal is whether that error of law was material to the outcome of the appeal. For the reasons set out below, it was not.
16. Although the Appellant claims to suffer from a number of physical health problems, there was no evidence before the First-tier Tribunal of a diagnosis for any of them (in particular no evidence from a GP and to the contrary, the Appellant has stated that he had not even visited his GP for a period of five years); no evidence of any treatment currently being given or required for any of the conditions (there being no indication what the Appellant's prescriptions were for or how he obtained them) and save for the Appellant expressing a desire to take employment in the United Kingdom once his health allows him to, there is no evidence at all of the impact of any of his physical health conditions on his day-to-day life.
17. There was some, but very limited, evidence in relation to the Appellant's mental health before the First-tier Tribunal, in the form of a medico-legal report from Dr Babalola and relatively brief reference in the Appellant's written statement to being diagnosed with depression being prescribed antidepressants and sleeping pills.
18. Again, there is no evidence of the Appellant having sought assistance from his GP for any mental health problems (as detailed in Dr Babalola's report, the Appellant had been deregistered from his GP practice having not attended for over five years), no specific evidence of a prescription for any medication for mental health problems or of any treatment for this at all within the United Kingdom; no specific evidence of when the Appellant's mental health problems began; no detailed or specific evidence of what treatment is required and very little, if any substantive evidence of the impact of the Appellant's mental health on his day-to-day living, either in the United Kingdom or what it may be on return to Pakistan.
19. Dr Babalola's report is, at best, of very limited assistance to matters which the First-tier Tribunal could have considered within the context of Article 8 and it is clear that when this evidence was considered within the context of Article 3, the First-tier Tribunal makes a number of criticisms of

the report. In particular the lack of detail contained within it and lack of confirmation as to whether the conclusions are based on anything other than what the Appellant has self-reported, as opposed to by reference to any other medical records. Further, clear findings are made by the First-tier Tribunal that medical treatment would be available to the Appellant on return to Pakistan, that financial support from the United Kingdom could continue and that he would be able to re-establish contact with family members on return who would provide support and be a protective factor for him. These findings have not been challenged by the Appellant, and although within the different context of an Article 3 claim, would also have relevance to any assessment under Article 8.

20. The evidence before the First-tier Tribunal on the availability of medical treatment on return to Pakistan and of any possible stigma to those with mental health problems, was similarly scant. In relation to the adequacy of treatment, it is for an Appellant to establish, at least initially, that he would not be able to access treatment required. However, in this case, there is not even an identification of what treatment is required, let alone any specific evidence as to its availability or otherwise. The mere fact that there is only limited mental health provision in Pakistan falls far short on the facts of this case of establishing that this Appellant could not access adequate treatment. Similarly, the single article about stigma attached to mental health, in the absence of any detailed evidence from the Appellant about his presentation or impact of his mental health (which is not covered in any detailed way in Dr Babalola's report), falls far short of establishing alone, or in combination with any other factors, a very significant obstacle to his reintegration on return to Pakistan and could carry little, if any weight within the overall proportionality balancing exercise.
21. In conclusion, the evidence before the First-tier Tribunal in relation to the Appellant's physical and mental health was so lacking that on no rational view could the Appellant's claim relying on poor physical or mental health lead to a conclusion that there would be very significant obstacles to his reintegration return to Pakistan, nor that his removal to Pakistan would be a disproportionate interference with his right to respect for private life in the United Kingdom. This is particularly so taking into account the factors in section 117B of the Nationality, Immigration and Asylum Act 2002 and there being no even arguable basis upon which anything other than little weight could be attached to the Appellant's private life given that he has remained in the United Kingdom unlawfully for virtually all of his time here and only made applications to attempt to regularise his stay on two occasions, in 2013 and 2019. For these reasons, the First-tier Tribunal's failure to expressly consider the Appellant's mental and physical health within the context of his Article 8 claim is not a material error of law, his appeal would inevitably be dismissed on human rights grounds in any event.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed G Jackson

Date 26<sup>th</sup> September 2020

Upper Tribunal Judge Jackson