Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13830/2018

THE IMMIGRATION ACTS

Heard at Field House (Face to Face)
On 25th May 2021

Decision & Reasons Promulgated
On 08th October 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

SARDAR AWAIS FAROOQ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Z Raza, instructed by Charles Simmons Immigration Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant a national of Pakistan born on 29th December 1986 appeals against the decision of the First-tier Tribunal Judge Carroll promulgated on 4th July 2019. The judge heard the appeal on 4th June 2019 against the respondent's decision of 28th November 2018 refusing the appellant's claim on asylum and humanitarian protection and human rights grounds.

2. The grounds for permission to appeal asserted that the decision in the appeal was given briefly and that the Tribunal erred materially in the following regards:

   (1) the Tribunal at paragraph 26 accepted that the appellant suffered from relatively poor mental health, particularly poor memory and this was of course corroborated by clear evidence to that effect. The Tribunal however failed to take this into account when assessing the credibility of the appellant's evidence both in his interview and orally before the Tribunal.

   (2) at paragraph 28 the Tribunal clearly sought to decide the Article 8 claim outside the Rules but in doing so failed to consider the implications of paragraph 276ADE(1)(iv) (although I presume the author meant (vi)), and in short whether the claim within the Rules was made out. The Higher Courts have repeatedly upheld that the requirement, even following the implementation of the Immigration Act 2014 to consider an Article 8 claim through the prism of the Rules as per **R (Agyarko) [2017] UKSC 11**. This was particularly relevant in these circumstances because there was demonstrably before the respondent substantial evidence of the appellant having formed a relationship in the UK and the risk of separation of that relationship was clearly a factor relevant for the Article 8 claim within the Rules.

   (3) there were reasonable grounds to consider the appellant had been a victim of trafficking rather than slavery.

3. At the hearing before me Mr Raza submitted that the Tribunal had failed to consider, as per the grounds, the paragraph 276ADE in particular there was no reference to **Kamara v SSHD [2016] EWCA Civ 813**. Mr Raza also made references to the medical evidence that was contained within the papers although he acknowledged that this was confined to GP records and a letter from the GP Dr F Shiner dated 22nd January 2019. In that letter it was confirmed that the appellant had "a long-standing issue with his short-term memory this is being investigated. This means that he struggles with time-keeping and also has reported poor sleep and stress/anxiety, for which he is receiving treatment for".

4. In submission, Mr Tufan relied on the submissions made in writing by Mr Clarke such that the first ground in relation to evidence failed to identify any evidence that could explain away the appellant's inability to record basic details from events some ten years ago and equally the ground failed to identify evidence that could explain why the appellant's 2018 disavowed the basis of the claim made in 2015 only to rejuvenate it again at an appeal in 2019, as set out at paragraph 14 of the decision. The judge noted that the GP letter only referred to a *short-term* memory issue being under investigation and the ground fails to identify any evidence of *long-term* memory loss. The judge noted that there was no corroborative evidence of the appellant's claimed head injury nor that he was receiving any form of therapy for mental health problems and the judge stated

"There is no credible evidence to show that he is currently taking any form of medication". It was submitted that the ground's contention that there was corroborate evidence of poor mental health capable or explaining the appellant's inability to recall historic events was not made out.

5. In relation to the second ground the appellant argued that at paragraph 28 the judge considered the appellant's Article 8 claim outside the Immigration Rules but failed to consider whether the appellant met paragraph 276ADE (1)(iv) and in the light of **Agyarko** the Tribunal was bound to consider Article 8 through the prism of the Rules. It was submitted on behalf of the Secretary of State that this ground was misconceived because the judge expressly found that there was in fact no evidence to show that if returned to Pakistan the appellant would be unable to continue with his private life in respect of all its essential elements and at paragraph 14 of **Kamara** confirmed that the idea of integration called for a broad evaluative judgment as to whether the individual "will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it".

6. In the light of the judge's finding that the appellant would be able to contract a private life and return is impossible to infer a different Article 8 conclusion had the judge expressly referred to paragraph 276ADE. The reference to the appellant's relationship was puzzling. The judge found at paragraph 28 that there was no family life in the United Kingdom, and it was submitted that a failed relationship in the UK would not preclude the appellant from contracting a private life on return.

7. In relation to the third ground it was argued that the appellant was forcibly transported around Europe and was abused and forced to do unpaid work and therefore a victim of trafficking or modern slavery. However, at paragraph 4 the judge found that the appellant did not take up an offer to be referred to the national referral mechanism and there is no reference to any trafficking claim.

Analysis

8. The appellant's claim was never put in terms that his mental health difficulty precluded him from giving evidence or that he was unable to remember significant aspects of his account. The skeleton argument is framed such that his psychological vulnerabilities would impede his ability to start life afresh in an area away from where he claimed to have had his relationship in Pakistan and where he had no family or cultural ties. Indeed this was what Mr Raza relied on in his challenge to the paragraph 276 ADE consideration by the judge. That is important for the assessment of the evidence by the judge and as submitted on behalf of the Secretary of State the judge concluded that there was limited evidence in relation to the appellant's mental health. Indeed, the judge stated that at paragraph 26 the following:

> *"26. There is very limited evidence relating to the appellant's mental health. A letter from a Dr Sinha, who I understand to be a GP, is at page A1 of the appellant's bundle. In that letter it is said that the appellant has – 'a longstanding issue with his short-term memory that is being investigated. This means that he struggles with timekeeping and also has reported poor sleep and stress/anxiety for which he is receiving treatment …'. There follows at pages A2 and following of the bundle evidence that the appellant was referred to an organisation called 'Healthy Minds'. The letter of 20th March 2019 at page A7 of the bundle records that the appellant attended an assessment with Health Minds and goes on to say – 'As discussed, the outcome of your assessment shows your needs are more suitable for specific support from another organisation …'. The letter also records that the appellant reported – 'fleeting thoughts of suicidal ideation but stated no current plans or intent to act' and concludes by saying that the referral to Healthy Minds is closed."*

9. The judge therefore did take into account the appellant had stated in examination-in-chief that he was stressed and unable to sleep but noted that there was no evidence that he had continued to take medication and there was no evidence that he had made an appointment to renew his medication from 4th April 2019. Those findings were open to the judge. The interview added little. The judge also noted at paragraph 26 that the referral to Healthy Minds was closed.

10. The reference to issue with memory was the "short-term memory" and not long-term memory. This therefore did not explain, as the Secretary of State, made out in her response, the alteration of the appellant's claims over time or the appellant's ability to recall basic details of his claim which were said, as the judge recorded, to have occurred many years ago and connected to hostility to a relationship and marriage in Pakistan. The appellant's claim, as the judge recorded, was that he left Pakistan in 2010 and arrived in the UK in 2015. In the circumstances having found very little medical evidence and in the context of the way the claim was framed, the judge's approach to findings on credibility and the medical evidence, and his findings, thereon were sustainable in law and the judge was entitled the approach the credibility findings as he did.

11. As the judge records at paragraph 14 by the time of the appellant's substantive interview in 2018 he had "disavowed the basis of the claim he made him in 2015 and his response was "unequivocal in response to the Question 8 that his claimed marriage in Pakistan took place a long time ago and – 'can be put to one side.'"

12. The question is whether the medical evidence before the judge had any weight and the judge clearly found that it did not in terms of the effect on credibility. As the judge noted at paragraph 27 it was the appellant own assertion that 'he had been hit by the police and had an injury on his

head'. The judge addressed this adding 'there is no medical evidence to support this aspect of his claim'.

13. As stated in **MN v Secretary of State [2020] EWCA Civ 1746** at paragraph 123 Underhill JL stated:

> *"The essential message of that possibly over elaborate discussion is that decision makers should in each case assess whether and to what extent any particular expert evidence relied on by an applicant supports their case as a matter of rational analysis. Observations in the case law are useful in drawing attention to likely limitations on the value of particular kinds of evidence, but they should not be treated as laying down rigid rules. If there are qualifications to the value to be given to a particular piece of evidence, that is not a reason for excluding it altogether: if it has some weight it must go into the overall assessment".*

And further at paragraph 127

> *"The term "credibility" is used a good deal in the context both of asylum appeals and of decisions whether a person is a victim of trafficking, and we have detected a tendency to treat it as having some special technical meaning. But in truth it connotes no more than whether the applicant's account is to be believed. In making that assessment the decision-maker will have to take account all factors that may bear on that question. Likewise the term "plausibility" is not a term of art…."*.

14. Overall the judge addressed the medical evidence throughout the decision, and his reasoning was open to him. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412. The judge engaged with the medical evidence and the appellant's evidence as to his health difficulties, recorded the appellant presented an empty and out of date packet of Amitriptyline (10mg only) and that he had made no further appointments at the medical centre. At paragraph 26 the judge noted that the referral to Healthy Minds was closed. Overall the judge was entitled to make an adverse credibility finding even though the appellant had presented some evidence in relation to mental health difficulties.

15. The judge concluded at paragraph 24 'In light of all of the evidence to which I have referred above, and for the reasons given by the respondent , I am not satisfied that the appellant is credible as to the basis of the circumstances in which he claims he was compelled to flee Pakistan or as to his claimed fear of return to Pakistan". Although the judge went on to discuss the medical evidence in the paragraphs below, he does make clear that at paragraph 25 that 'at the outset of the hearing' counsel referred to the mental health issues. The judge evidently had in mind these submissions when drawing his conclusions and on reading the decision as a whole it is clear that the judge factored the appellant's mental health difficulties into his assessment. I also note that counsel in fact was

recorded as relying on the mental health difficulties in relation to the appellant's return on Article 8 grounds rather than the protection claim.

16. I turn to the consideration of paragraph 276ADE, and the criticisms of the judge for failure to address the medical evidence or in line with **Kamara** which held at paragraph 14 that 'integration calls for a 'broad evaluative judgment be made'.

17. The judge, however, clearly engaged with the limited medical evidence and stated at paragraph 28, when considering Article 8, "The medical evidence does not show that the appellant is currently receiving any form of therapy for mental health problems and there is no credible evidence to show that he is currently taking any form of medication". The judge made a finding at the close of paragraph 28 to the effect that "there is, in fact, no evidence to show that, if returned to Pakistan, the appellant would be unable to continue with his private life in respect of all its essential elements". That would encompass any element of Paragraph 276ADE.

18. As to very significant obstacles on return, it has been held by various legal authorities including **Secretary of State v R (Kaur) [2018] EWCA Civ 1423 para [57],** that it is for the appellant to demonstrate that there are insurmountable obstacles to his return and a bare assertion will not suffice. By analogy, the same must be true for 'very significant obstacles' (which has been held in **Agyarko** to equate with 'insurmountable obstacles'). The facts in this case and of which the judge was well aware was that the appellant came to the UK at the age of 26 years having spent most of his adult life in Pakistan and there had been adverse credibility findings against him. The judge did not accept that he had mental health difficulties such as to prevent his integration in Pakistan. Nothing presented by the appellant and on the facts found by the judge could cross the threshold of very significant obstacles. Even if not specifically identified the judge effectively did address paragraph 276ADE. The lack of specific reference to paragraph 276ADE was not, in this case, material. The judge reasoned the matter outside the Immigration Rules as to whether the refusal of his human rights claim was proportionate and factored in paragraph 117B of the Nationality, Immigration and Asylum Act 2002 which provides that little weight should be given to a private life established by a person at a time when that person's immigration is precarious, and as the judge stated "as that of the appellant has been since his arrival in the UK".

19. Ground 3 has no merit whatsoever because the appellant has refused a referral to the National Referral Mechanism and the claim was not based on trafficking.

20. I am mindful of the exhortation in **UT (Sri Lanka) [2019] EWCA Civ 1095** at paragraph 19

> **"'**Baroness Hale put it in this way in *AH (Sudan) v Secretary of State for the Home Department* at [30]:

> "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

Notice of Decision

I find no error of law in the First-tier Tribunal decision and the decision will stand.

No anonymity direction is made.

Signed Helen Rimington Date 15th July 2021.

Upper Tribunal Judge Rimington