IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/38564/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 September 2015	**On 16 September 2015**

Before

UPPER TRIBUNAL JUDGE WARR

Between

FOUAD ABBAS RAZA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P R Collins, Counsel instructed by Gross & Co Solicitors
For the Respondent: Ms A Brocklesby-Weller, a Home Office Presenting Officer

DECISION AND REASONS

1. The appellant had leave to remain in this country as a student until 14 July 2014. He applied for leave to remain on 10 July 2014 but this application was refused on 11 September 2014. The respondent records that the application for leave to remain made in July was an application outside the Rules. The respondent noted that the applicant had raised mental health issues in support of his case under Article 8. The respondent considered there were both in-patient and out-patient facilities in Pakistan and that his condition was not life threatening. Treatment for his condition was available. Although the healthcare systems in the United Kingdom and in

Pakistan were unlikely to be equivalent this did not mean that the appellant's case was exceptional and did not entitle him to remain in the United Kingdom. The respondent noted that there was no evidence to suggest that the appellant would be denied medical treatment or that he would be unable to travel to obtain such treatment. The respondent also took into account that the appellant's parents were not settled in the UK and had only limited leave to remain, expiring on 23 May 2015. There was no reason to suggest that they could not adequately support and assist the appellant on his return. A grant of leave to remain outside the Rules was not appropriate in this case.

2. The appellant appealed against the decision and his appeal came before a First-tier Judge on 19 December 2014. The judge had statements from the appellant and his mother and medical evidence before him. Counsel told me that he heard oral evidence from the appellant and his parents. The judge summarised his conclusions as follows:

> "28. The maintenance of good mental health is a crucial part of private life associated with the aspect of a person's moral and physical integrity. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life. However, the question that arises is whether or not the appellant's moral integrity would be substantially affected to a degree falling within the scope of article 8. The appellant's removal therefore from the United Kingdom in the circumstances where he is suffering from and receiving treatment for depression and psychosis is an interference with his private life that requires justification.
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> 29. The appellant's mental health has stabilised with the treatment that he is receiving. This same treatment is available in Pakistan albeit it may be more readily available to those who can pay for it privately. This is not an issue for the appellant as his parents have the means and have expressed a willingness to pay for it. In his psychiatrist's view, the appellant's removal may have an adverse effect on his mental health if he returns to Pakistan without his family. It was the expiry of his visa and the prospect of leaving his family that had caused his mental health problems. However, the appellant's mother will go back to Pakistan with him if she has to. Both the appellant and his mother will not be alone in Pakistan. The appellant's mother's brother-in-law (the appellant's uncle), his children (the appellant's cousins) and the appellant's mother's mother-in-law (the appellant's grandmother) all live there. In addition, the appellant's mother's other brother-in-law visits Pakistan at least four times a year. It is therefore clear that whilst the appellant's family ties in Pakistan are not the same as in England, they are the same as or only slightly less than the family ties he has in England. I base this on the fact that he will have one parent with him, just like his siblings in England, as well as members of his extended family with whom he and his family spent the formative years of their lives.
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> 30. Whilst he may be leaving behind his father and siblings, he nevertheless will be returning to friends and family in Pakistan with his mother.

31. The treatment that the appellant requires is available both in Karachi where he is from, and Islamabad. Whilst the appellant has raised the issue of attacks on the Shia Muslim minority, there is no specific threat to him or his family. The threat is a general threat to Shia Muslims in Pakistan. It is also worth noting that the threat level is not perceived to be so high that it merits an application for asylum in this case. I have also taken into account the fact that the appellant's extended family lives in Pakistan and that his uncle visits the country at least four times a year. He would not visit as frequently if the threat level presented a risk to his safety. In light of this I do not consider that the threat level to Shia Muslims in Pakistan is at a level that would prevent travel within the country by Shia Muslims.

32. In assessing whether or not interference with the appellant's private life is justified, I take into account the public interest in the maintenance of effective immigration controls. I have taken into account the harm to the appellant's mental health caused by his removal and or a deterioration in his mental health. I note that his present treatment, which will continue in Pakistan, has stabilised his condition and there are good prospects that it will remain stable because his mother will return with him. I also note that he has friends and family in Pakistan who would help him to settle.

33. Taking into account the above, I consider that the public interest in maintaining effective immigration controls outweighs the interference with his right to a private life.

34. It is also undoubtedly the case that the appellant has a family life in the United Kingdom as his parents and siblings live here. They do not have indefinite leave to remain. The family has lived most of their lives in Pakistan where they still have family ties and can return there. The appellant's father has previously done his work for the same company from both Pakistan and Dubai and there is no reason why, if he had to, he could not do it again from either of those countries. Mention was made of a security threat to Shia Muslims but the threat was not considered sufficient to give rise to an application for asylum.

35. The family are therefore used to moving about in connection with his father's employment and if necessary could, as a whole relocate to either Pakistan or Dubai to be with the appellant. It cannot be said that the life of the appellant's family cannot reasonably be expected to be enjoyed elsewhere.

36. I also note that the appellant only had a visa to enable him to study and that upon its expiry, without more, he would have had to leave his family. This application in itself is for an extension of only 6 months indicating that there is an expectation by the appellant that he will have to leave his family.

37. In considering whether any interference with the appellant's family life is proportionate, I bear in mind the threat of harm to his mental health and any adverse effect on the appellant. In light of the available treatment and the presence of his family in Pakistan, I do not consider that the interference with his family life outweighs the public interest in the maintenance of effective immigration controls and he therefore cannot meet the Immigration Rules approved by Parliament."

3. The appellant appealed and permission to appeal was refused by the First-tier Tribunal. However permission to appeal was granted on 4 June 2015 by Deputy Upper Tribunal Judge Archer who summarised the grounds as follows:

> "The grounds assert that the judge failed to adequately set out the legal framework for Article 8 consideration outside the Immigration Rules and therefore failed to apply the correct law. The judge also erred in law by concluding that the appellant's treatment has stabilised his condition; the judge failed to clarify that the appellant's mother was only able to travel to Pakistan with the appellant for a short visit. The judge failed to consider Section 117B of the Nationality, Immigration and Asylum Act 2002.
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> I find that the judge has failed to address Section 117B considerations at all and that is an arguable material error of law. The appellant appears to be financially independent. In addition, paragraph 37 of the decision refers to the Immigration Rules in the context of an Article 8 claim outside the Rules. It is arguable that the judge has not applied the correct tests when considering Article 8. Permission to appeal is therefore granted on all grounds."

4. At the hearing Counsel said he had settled the initial grounds of appeal. However Ms Brocklesby-Weller said she only had the renewed grounds. Counsel only had his original grounds. It was agreed that the grounds were similar apart from an additional point taken in the renewed grounds in paragraph 12 which raised the point about the appellant's mother being only able to travel to Pakistan for a short visit.

5. Mr Collins acknowledged that many of the cases referred to in the grounds had been superseded by **SS (Congo) [2015] EWCA Civ 387**. He submitted that the First-tier Judge had not properly approached matters and had jumped straight into Article 8 and he had inadequately dealt with the legal framework in paragraph 16 and 17 of the determination which read as follows:

> "16. The appellant placed no reliance on article 3 and limited his claim to article 8. Specifically this related to the effect on his private and family life caused by the effect of removal on his mental health.
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> 17. It is for the appellant to substantiate the primary facts upon which he relies in support of his claim. Having done that, I am required to strike a balance to determine whether the harm done to the appellant is proportionate to the public interest served by his expulsion."

6. It had been argued in ground 2 that the judge had erred in failing to take into account Sections 117A and 117B. He acknowledged however that in paragraph 32 the judge had made reference to the public interest in the maintenance of effective immigration controls – a matter highlighted in 117B(1). He acknowledged that the arguments based on other parts of Section 117B face the obstacle of the panel decision chaired by the Vice President, **AM (Malawi) [2015] UKUT 0260 (IAC)** where at head note (2) the Tribunal had found that an appellant could obtain no positive right to a grant of leave to remain from either Section 117B(2) or (3) whatever the degree of his fluency in English or the strength of his financial

resources. The judge had erred in failing to make any reference to well-known cases such as **Razgar [2004] UKHL 27** or **Huang [2007] UKHL 11**. The judge had not applied the correct test of finding whether there were compelling reasons and had not taken into account the appellant's mental health in the balancing exercise. Further medical evidence had been provided after the judge's decision.

7. Ms Brocklesby-Weller acknowledged that the judge had not referred to case law but had given consideration to all matters in substance. He had considered for example whether there were very significant obstacles to re-integration in paragraph 29 of the determination. Drugs treatment was available in Pakistan and the appellant's condition had stabilised. The appellant had spent his formative years in Pakistan. All relevant points had been noted by the judge in substance and the medical treatment issue had been the only point advanced.

8. The judge had identified that Article 8 was engaged in paragraph 28 and had found that the interference with the appellant's private life required justification. The judge then went on to deal with the issue of proportionality. He had found that the interference was justified in paragraph 32 and that the public interest outweighed the interference with the appellant's right to a private life in paragraph 33. The judge had then turned to family life and he had gone through the **Razgar** steps.

9. In relation to Section 117 she referred to **Dube [2015] UKUT 00090 (IAC)** where it had been held that it was not an error of law not to refer to Sections 117A-117D and what mattered was substance, nor form. It was clear that the judge had referred to part of Section 117B. He had referred to immigration control and the issue of precariousness. A child was not involved. She also relied on **AM (Malawi)**.

10. The judge had not materially erred in failing to refer to **Razgar** and other case law and he had made findings which were not challenged. He was entitled to conclude that the interference with the appellant's private life was not disproportionate. The family were willing to pay for treatment. He had taken into account the family circumstances in Pakistan. There was a similarity between the circumstances in Pakistan and the United Kingdom as he had noted in paragraph 29 of the determination.

11. In relation to the additional point in the renewed grounds of appeal about the appellant's mother it was the choice of the family where they would live. As the judge had noted the family did not have indefinite leave to remain.

12. Counsel reiterated that the judge had not given consideration to the **Razgar** steps or the statute. While under the statute little weight should be accorded to private life established at a time when a person was in the United Kingdom unlawfully, that did not mean that no weight should be accorded to such life.

13. At the conclusion of the submissions I reserved my decision. I remind myself that I can only interfere with the decision on a point of law. The judge made findings of fact in paragraphs 21 to 27 of the decision and none of the findings were challenged in the initial grounds of appeal settled by Counsel. Among the findings were that the appellant has friends and family with whom he was in contact in Pakistan and "should he return to Pakistan, his mother would accompany him. He would not be alone should he be returned to Pakistan." The judge heard oral evidence from the appellant's mother and his findings were open to him. Quite apart from the appellant's mother there were many visits by other members of the family and the judge was entitled to conclude as he did on the matter in paragraph 29. I note that Counsel did not take the point in the grounds that he settled and there appears to have been no further evidence or statement from the appellant's mother qualifying her evidence as recorded by the First-tier Judge.

14. The main issue is the judge's failure to make reference to the amendments made by the Immigration Act 2014 to the 2002 Act and the failure to refer to **Razgar** and other authorities. It is said that he misdirected himself in paragraph 17 of the determination and in the concluding paragraph.

15. This was an application for leave outside the Rules and the refusal dealt with the application on that basis. The respondent considered the appellant's case based on his mental health issues. She took into account the available treatment and there was no evidence that the appellant would be denied such treatment or that he would be unable to travel to obtain it. There was no reason why the appellant's parents could not adequately support and assist the appellant on his return given that they were not settled and only had leave to remain until 23 May 2015. This is a point taken up by the judge in paragraph 35 and he also notes that the appellant only had a study visa and upon its expiry would have had to leave his family.

16. It is unsurprising that the judge focused on the appellant's mental health which was the point relied upon. In my view it is quite clear from a careful reading of the determination that the judge went through the **Razgar** steps. Counsel acknowledges that there is a reference to the maintenance of effective immigration controls. In respect of the other matters in Section 117B Counsel acknowledges that the case law is against him. I note the judge did have in mind the fact that the family as a whole were as he put it financially capable. Looking at the substance rather than the form of the determination I am not satisfied that it was flawed in law, still less materially flawed in law. As it was put in the respondent's response of 11 June 2015 it is hard to understand how any judge would have come to a different conclusion.

Notice of Decision

17. Appeal dismissed.

18. The First-tier Judge made no anonymity direction and I make none.

FEE AWARD

I make no fee award.

Signed Date 14 September 2015

Upper Tribunal Judge Warr