Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00595/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19th December 2018	**On 7th February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ASIF [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Symes, Counsel, instructed by Clyde Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The is the remaking of a decision in the appeal of the Appellant against the Respondent's decision of 23 December 2016, refusing his human rights claim which had been made a year previously.

2. By a decision promulgated on 21 August 2018 I found that the First-tier Tribunal had materially erred in law and I set its decision aside (my error of law decision is annexed, below). In essence, I concluded that the judge had erred in his assessment of relevant medical evidence. I then adjourned the appeal in order for the Appellant

to be able to provide updated medical evidence about his mental health problems. I confirmed that the core issue in the case related to Article 8, both within and without the context of the Immigration Rules. I preserved two findings of fact from the First-tier Tribunal's decision: that the Appellant had cleared his NHS debt, and that he had been aware of the refusal of his asylum claim in 2003 and the subsequent dismissal of his appeal.

The evidence now before me

3. I have considered the Respondent's bundle and the bundle from the Appellant (AB), paginated 1-92 (which is in fact exactly the same as that contained in the Respondent's bundle). In addition, and in compliance with my previous direction, there is a letter from the Principal Clinical Psychologist, Dr S El-Leithy, dated 15 August 2018. I have admitted this pursuant to Rule 15(2A) of the Upper Tribunal Procedure Rules.

4. There has been no further oral evidence.

Submissions

For the Appellant

5. Mr Symes relied on his skeleton argument. He submitted that the Appellant's claim was a mixed Article 8 scenario based in part on the ties established in the United Kingdom, but also in respect of his mental health problems. It was submitted that the Appellant would not in fact have any support network on return to Pakistan. His parents had passed away, as had a brother. His sister was married and living with her husband, another brother was estranged from the rest of his family and another was residing in South Africa. In respect of paragraph 276ADE(1)(vi) of the Rules, and, recognising in response to my intervention concerning the actual wording of the provision, that the relevant date is that of the Appellant's human rights claim, Mr Symes relied on paragraph 14 of Kamara [2016] EWCA Civ 813. The Appellant's significant mental health problems together with the lack of support and his time away from his home country all combined to show that there would have been very significant obstacles as at the relevant date.

6. Outside the context of the Rules and as of the date of the resumed hearing, it was submitted that any treatment in Pakistan would not be accessible, that there was a significant differential between the Appellant's circumstances in this country and that he would face in Pakistan. It was accepted that the Appellant will have treatment on the NHS if he remains in this country and this would be at a cost to the public purse. It was also accepted that the Appellant's residence in the United Kingdom had always been unlawful. In respect of suicide, Mr Symes relied on the same factual matrix applicable to the Article 8 issues.

For the Respondent

7. Mr Lindsay relied on the reasons for refusal letter. He emphasised the significance of the Appellant's unlawful residence in this country. He submitted that as of 2015 there were no very significant obstacles. Treatment would have been available to the Appellant and he could have had support from his sister at least. There was no reason why the Appellant could not engage with relevant treatment. One of the factors adverse to the Appellant's current mental health was his unresolved immigration status. This issue would be removed once the Appellant had been removed. It was submitted that his mental health would be likely to improve after return.

8. I was referred to paragraph 14 of MA (Prove Destitution) Jamaica CG [2005] UKIAT 00013 and paragraphs 8, 9 and 19 of Parveen [2018] EWCA Civ 932, both in terms of the situation as at 2015 and now. Mr Lindsay submitted that the Appellant had failed to make any enquiries about possible support on return. It was suggested that a mosque might be able to help in addition to or alternatively to his sister.

9. With reference to the position as of now, reliance was placed on section 117B(4) of the 2002 Act. The Appellant would need to show that there was a very strong or an exceptional case for him to succeed. The ties in the United Kingdom were accepted but these had all been established during unlawful residence. The Appellant's mental health was acknowledged but this was not sufficient for him to succeed in his appeal. The cost to the public purse as a result of treatment on the NHS was a significant matter.

In reply

10. In reply Mr Symes suggested that the Appellant's sister would not be in a position to assist given that she was now treated as being part of her husband's family. It would be unlikely that help would come from a mosque given that the Appellant had converted from Sunni Islam to Shia Islam.

11. At the end of the hearing I reserved my decision.

Findings of fact

12. I have considered the evidence as a whole. The burden of proving relevant facts rests with the Appellant and the standard is that of a balance of probabilities.

13. I find that the Appellant has been in the United Kingdom since 2003. I find that his residence in this country had at all times been unlawful.

The Appellant's circumstances as at the time of his human rights claim

14. I accept that he had by June 2015 established a good friendship with Mr Butt and his children. This has not been challenged by the Respondent and is borne out by the evidence before me (and that before the First-tier as well).

15. In the context of paragraph 276ADE(1)(vi), it is important that I first deal specifically with the medical evidence as it reflects the Appellant's circumstances in June 2015, when his human rights claim was made. The following evidence is of particular relevance here:

    i. the reports of Mr C Yeung, CBT Practitioner, dated 27 August 2015 and 20 April 2015 (60 and 76 AB);

    ii. the report of Dr P Brain, Consultant Psychiatrist, dated 24 March 2015 (73 AB);

    iii. the report of Dr P Stallworthy, Consultant Clinical Psychologist, dated 11 February 2015 (81 AB).

16. This evidence has not been expressly challenged before me, certainly not in respect of the suitability of the various sources and the contents of the reports.

17. It is quite clear to me that the body of medical evidence as a whole represents a solid and reliable picture of the Appellant's mental health circumstances in the period running up to, at the time of, and relatively soon after, the making of the human rights claim in June 2015. I place significant weight on this evidence.

18. On the basis of what I have said in the preceding paragraph, I make the following findings.

19. The Appellant was in fact suffering from PTSD and a Major Depressive Episode. Dr Smallworthy dedicates a section of her report of February 2015 to the question of whether the Appellant was feigning his symptoms: her very clear conclusion was that he was not (87 AB). I agree.

20. I find that the PTSD was at a "moderate" level, whilst the depression was "severe" (see, for example, 73, 77, 88 AB). In respect of the latter, I have taken account of what is said by the CBT Practitioner in his report of August 2015, where he records that the level of depression had reduced from "severe" to "moderate" following a course of therapy (61 AB). However, it is more likely than not that this reduction only occurred on completion of a course of sessions and had not occurred at the time the human rights claim was made a couple of months earlier. In addition, I find that the reduction was not durable, as proved by subsequent evidence (see paragraph 38, below).

21. I find that although the Appellant had by that time received some limited treatment, this had not had a materially positive impact on his overall mental health and in fact the depression was so bad that measures to alleviate the PTSD could not be pursued (73, 78, 88 AB).

22. I find that the various symptoms affecting the Appellant's daily life included poor sleeping and eating patterns, lack of any motivation, and poor memory and concentration (74).

23. In respect of the PTSD, I find that there was an objectively based foundation for this condition. Although certain elements of his original protection claim had been rejected years before, the Respondent had always accepted that the Appellant had

been the subject of an acid attack in Pakistan (documentary evidence about this incident had been produced and see also the final paragraph of the Respondent's letter at 27 AB). I note too that even the reasons letter refusing the asylum claim in 2003 did not dispute the assertion that the Appellant was a follower of the Shia faith and had experienced problems from Sunni groups (34-36 AB). Further, on the basis of what I can glean from the Respondent's rejection of fresh representations in 2013, the Adjudicator who dismissed the Appellant's appeal in 2003 found there to be a risk in the home area bit concluded that internal relocation was a viable option (28 AB).

24. Therefore, the evidence discloses a firm factual nexus between what happened to the Appellant in Pakistan and the PTSD. It also provides a strong basis for what was, and still is, the Appellant's subjective fear of returning to that country.

25. In turn, this fear bears on the desire and/or ability of the Appellant to actually engage with any relevant treatment that may potentially be available in Pakistan. As is made clear in a passage in the report of Ms Terri Porter, dated 14 September 2017:

> "It is vital that when undergoing trauma-focused work, the client [the Appellant] must feel safe in their immediate environment. Given the strength of Mr [S]'s beliefs that he would be at risk of further harm should he be returned to Pakistan, it is my belief that he would struggle to engage effectively in treatment delivered in Pakistan if it were available, due to those fears about his safety." (58 AB)

26. Although that report post-dates the human rights claim, it is quite clear that the beliefs were held equally strongly in 2015 as they were in 2017.

27. I place significant weight on the passage from the 2017 report cited above. The author, whilst a trainee, was supervised by the Principle Clinical Psychologist (Dr El-Leithy) and there is no reason for me to reduce the weight attributable to the evidence.

28. As regards the depression, two threads run consistently through the medical evidence: the strong feelings of hopelessness/worthlessness and the guilt held and expressed by the Appellant at the time (see, for example, 74). I find that these were genuinely held beliefs. Arising from the sense of hopelessness, and expressed on several occasions to different professionals, was the fact, as I find it to be, that the Appellant was having suicidal ideations. Having said that, taking the evidence as a whole, I find that his had also truthfully stated that he had had no actual plans to take his own life.

29. In her report of June 2016 (which is otherwise in very similar terms to the 2015 report), Dr Stallworthy addresses the issue of the impact of removal on the Appellant's mental health and in particular the risk of suicide. At 71 AB she notes that risk fluctuates over time and is a dynamic process. She goes on to say that risks connected to suicide involve numerous factors including hopelessness, suicidal ideation, depression, intent, and compliance with treatment. An absence of suicidal intent at one point does not preclude a risk in the future.

30. Dr Smallworhty's view was that there was a "high" risk of the Appellant attempting suicide upon being notified of removal action and a "marked deterioration" in his mental health post-removal, which could include active suicidality and psychotic symptoms (71 AB).

31. In light of the evidence before me, I find that the act of removal and the Appellant's reaction to his situation in Pakistan would have very likely caused a significant deterioration in his mental health. It is highly likely that this would have included increased thoughts of suicide, a worsening of the already severe depression, and an exacerbation of the PTSD symptoms.

32. I specifically reject Mr Lindsay's suggestion that removal would in fact act as a positive factor for the Appellant by finally resolving his immigration position. That is, with respect, much too sanguine a view. The reality would have been that the Appellant's immigration status would have been resolved *against* him, thereby leading to actual removal (rather than simply the threat thereof) and being forced to return to the country in respect of which he held a very strong subjective fear (which had of course contributed to his serious mental health problems even whilst in the United Kingdom).

33. I find that the only potential source of any meaningful support for the Appellant at the time would have been his sister, who is married and resides in Pakistan. His parents and a brother passed away some years ago. One surviving brother lives in South Africa. Although there is no evidence from him, I accept the Appellant's evidence that there is no contact. Another surviving has, I find, been estranged from the Appellant for many years. The burden of proof rests with the Appellant, but in all the circumstances I find that it is highly unlikely that material support would have emanated from these quarters.

34. I agree with Mr Symes' point that the sister has effectively become part of her husband's family. This is in line with well-known cultural norms, but also the Respondent's own view of these matters as expressed in guidance throughout the years, focussed mainly on the ability of married women on the sub-Continent to provide financial assistance to relatives. On the face of it, it is unlikely that the Appellant's sister could have taken a unilateral position and provided financial and/or practical assistance to the Appellant. Although I accept that no actual enquiries have been made with her as to whether she might in fact be been able to help, it is more likely than not that relevant support was not feasible.

35. There has never been any serious suggestion that Mr Butt was in a position to provide financial support to the Appellant if the latter were removed to Pakistan and I find that he was not.

36. Mr Lindsay submits that a mosque in this country could have been a source of support. In my view this is so speculative that it can properly be discounted. The Appellant has never received any support from such an institution in the past and in any event, it is an undisputed aspect of his circumstances that he effectively converted from Sunni Islam to Shia Islam whilst in Pakistan. This would have

amounted to a very real obstacle in the way of seeking and obtaining meaningful support from the great majority of mosques in the United Kingdom.

The Appellant's current circumstances

37. It is clear that the Appellant has required a good deal of input since 2015. He underwent a course of psychological treatment between March and September 2017, has been under the care of his GP, and has been on relevant medication throughout. I find that there have been some "modest but reliable" improvements in his mental state recently, as confirmed by Dr El-Leithy's letter dated 15 August 2018.

38. However, notwithstanding the significant input, Dr El-Leithy is of the view that the Appellant's mental health "remains unchanged"; his depression still being of a "severe" nature and the PTSD being "moderate".

39. I find that whilst there have been the slight improvements noted in the most recent medical evidence, the Appellant's overall situation is essentially very similar to that pertaining to the time at which the human right claim was made in mid-2015.

Conclusions on Paragraph 276ADE(1)(vi)

40. Paragraph 276ADE(1)(vi) states:

> "The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (vi) subject to sub-paragraph (2), is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."
>
> (underlining added)

41. I direct myself to paragraph 14 of Kamara:

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made 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, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

42. I also bear in mind that the relevant threshold is a high one. The words "significant" and "very" are included in the test for a reason. Paragraph 9 of Parveen states:

> "That passage focuses more on the concept of integration than on what is meant by "very significant obstacles". The latter point was recently addressed by the Upper Tribunal (McCloskey J and UTJ Francis) in *Treebhawon v Secretary of State for the Home Department* [2017] UKUT 13 (IAC). At para. 37 of its judgment the UT said:
>
> > "The other limb of the test, 'very significant obstacles', erects a self-evidently elevated threshold, such that mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even where multiplied, will generally be insufficient in this context."
>
> I have to say that I do not find that a very useful gloss on the words of the rule. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".”

43. Looking at the Appellant's circumstances as at the date of his claim in late June 2015, I conclude that there were "very significant obstacles" to his reintegration into Pakistani society. In so concluding, I have made a broad, fact-specific, evaluative judgment in light of all the relevant circumstances.

44. My conclusion is based on the following matters.

45. At that time he had been away from Pakistan for some twelve years. That is not exceptionally long, but nor is it inconsequential. It has *some* bearing (taken in conjunction with other matters) on my overall assessment, going to the degree of ease with which the Appellant could be expected to re-adjust to living in the country.

46. The Appellant left Pakistan at the age of 24 and clearly speaks Urdu as his mother tongue. It cannot be said that he would be a complete "stranger" to Pakistani culture and society. To that extent, he would have been able to at least understand the underlying basis upon which life in that country is carried on.

47. What is of most significance in this appeal is the Appellant's very poor mental health as at the time of the human rights claim. To avoid simply repeating my findings of fact, I give a summary of core points relating to his mental state:

    i. he suffered from "severe" depression and "moderate" PTSD;

    ii. the PTSD arose out of acknowledged traumatic events in Pakistan;

    iii. his treatment was then only at its initial stages and had had no material impact;

    iv. he held strong feelings of hopelessness/worthlessness and guilt;

    v. he held equally strong beliefs that he would be at risk of harm on return to Pakistan.

48. He was clearly not functioning at anything much above a fairly basic level, even when in the "safe" environment of the United Kingdom and with the support of Mr Butt and medical professionals.

49. I have found that removal (indeed, even the immediate prospect thereof) would have had a significantly adverse impact on the Appellant's mental health. In other words, it would have got much worse than it already was. I emphasise the fact that this state of affairs was not based simply on the Appellant being unable to remain in the United Kingdom, but, importantly, also on the ground that he would be returning to a country in respect of which he held a dread fear. He would have found himself in a society which was, at least to his mind, essentially hostile, without the support network in place in this country, and with close to no self-worth.

50. I have found that he would not have had any meaningful support in Pakistan. That would only have exacerbated his precarious situation. Even if some form of financial assistance had been available, this would not of itself have done much to alleviate the psychological barriers to re-integration, namely the feelings of hopelessness, guilt and fear.

51. There is then the question of possible treatment in Pakistan at the relevant time. There is no evidence before me to indicate that no appropriate treatment exists at all in Pakistan. I conclude that it probably does, albeit that provision is highly likely to be limited. However, on the basis that some form of treatment would have been available in principle, and even assuming that some form of financial assistance for the Appellant was in place, there is the crucial issue of effective engagement, as highlighted in paragraphs 24-27, above. I conclude that the combination of the deteriorated mental health and the sense of fear and instability would have precluded the Appellant from actually accessing relevant treatment. Thus, there was no effective mechanism to reverse the deterioration and manage the mental health problems at a reasonable level.

52. As the risk of suicide, the test under Article 3 is higher than that applicable under paragraph 276ADE(1)(vi). The Appellant does not need to show that there would have been a sufficiently serious risk and my conclusion on the "very significant obstacles" question does not depend upon such a risk. Having said that, there was in my view a significant risk of increased contemplation of acting on ideations.

53. Mr Lindsay has referred me to MA, but the Appellant's case is not founded upon an assertion of destitution on return. In any event, in my view the test of "very significant obstacles" does not require the Appellant to make such a claim out.

54. A further matter which is of some relevance is the fact that the Appellant follows the Shia faith. I am fully aware that this appeal does not involve a protection claim. However, it is an uncontroversial fact that Shias form a fairly small minority group in Pakistan and that they face hostility from certain sections of the Sunni majority. I am not concluding that there is a real risk to the Appellant on the basis of his faith, but whether from his own perspective or that of others, there is likely to be an additional obstacle in his path. Having said that, I do not place great weight on this particular point.

55. The various matters discussed above go to show that the Appellant would have faced obstacles in respect of:

    i. his ability to find any form of legitimate employment;

    ii. his capacity to participate in Pakistani society;

    iii. his ability to see himself and act as an "insider";

    iv. the perception of others to see him as being an "insider";

    v. his ability to operate on a daily basis and at a reasonable level, having regards to the essential components of life, in the context of Pakistan;

    vi. his ability to establish social relationships to any effective extent.

56. I conclude that, when taken cumulatively, and in light of the particular facts of this case, these obstacles and the Appellant's ability to deal with them went far beyond "mere inconvenience or upheaval", but represented "very significant" barriers to a re-integration into Pakistani society.

57. In essence, he would have been, either because of his own view of himself and the world around him or the perception of him by others, or a combination of the two, a person having to try and exist on the periphery of Pakistani society.

58. As at the time of the human rights claim, the Appellant met the requirements of paragraph 276ADE(1)(vi). In light of this and applying TZ (Pakistan), he is entitled to succeed in his appeal on Article 8 grounds.

Article 3 and Article 8 outside the context of the Rules

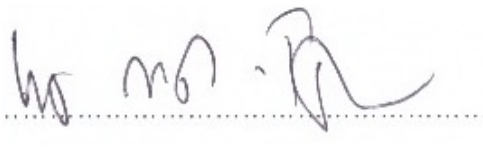
59. In light of my conclusions on paragraph 276ADE(1)(vi), it is unnecessary to address Article 3 and Article 8 in its wider context.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remake the decision and allow the Appellant's appeal on the basis that the Respondent's refusal of his human rights claim was unlawful under section 6 of the Human Rights Act 1998.

No anonymity direction is made.



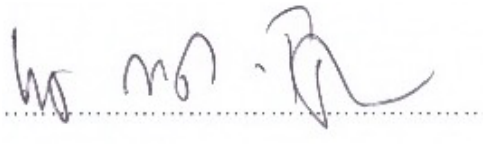
Signed Date: 17 January 2019

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make award of £140.00.



Signed Date: 17 January 2019

Deputy Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00595/2017

THE IMMIGRATION ACTS

Heard at Field House
On 2 August 2018

Decision & Reasons Promulgated

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Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ASIF [S]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Halim, Counsel, instructed by Sky Solicitors Ltd
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge S Taylor (the judge), promulgated on 16 April 2018, in which he dismissed the Appellant's appeal against the Respondent's decision dated 23 December 2016, refusing a human rights claim made on 29 June 2015. That claim had been based specifically on the Appellant's very lengthy residence in the United Kingdom coupled with his mental health problems.

The judge's decision

2. The Respondent was not represented at the hearing. The judge found as a fact that the Appellant did not have an outstanding NHS debt for certain medical treatment received ([11]). The judge finds that the Appellant was in fact aware of the refusal of a previous asylum claim in 2003. The important passages in the fairly brief decision are contained in [16]-[18]. At [16] the judge considers the relevant immigration rules, specifically paragraph 276ADE(1)(vi), and states that the test thereunder was whether there would be "insurmountable obstacles" to the Appellant's reintegration on return to Pakistan. The rest of that paragraph is dedicated to a consideration of article 3. In [17], and with reference to the Appellant's mental health conditions, the judge considers two items of medical evidence, one from September 2017 written by a trainee clinical psychologist under supervision by a consultant, and another written by a consultant psychiatrist in 2015. The judge prefers the latter to the former, giving as his reasons for this the apparent fact that in 2015 there had only been one contemplation of suicide by the Appellant and that his strong Islamic faith prevented him from carrying such an action out. It is said that the 2017 report was written after the Appellant had improved having attended a CBT course. The judge finds that medical attention would be available for the Appellant in Pakistan and that there was no significant risk of suicide if he were to be removed from the United Kingdom. A removal may have caused what he described as a "temporary negative effect" and the Appellant would have access to relevant medical attention. In the final sentence of that paragraph the judge states that there would be no very significant obstacles to the Appellant's reintegration. At [18] the judge considers the article 8 claim outside the context of the rules and finds that the Appellant had not established a private life to the extent that would engage article 8.

3. The appeal was duly dismissed.

The grounds of appeal and grant of permission

4. The succinct grounds of appeal challenge the judge's treatment of the medical evidence, asserting that no adequate reasons were provided as to why the 2015 report was preferred to that from 2017. It is also said that the judge misinterpreted the contents of the relevant medical evidence. The second ground of challenge relates to the judge's conclusion that there was no private life in the United Kingdom. It is said that this conclusion was reached without reference to the Appellant's mental health problems and treatment received therefore. Finally it is said that the judge applied the wrong test under paragraph 276ADE(1)(vi): the test was not "insurmountable obstacles" but whether there would be "very significant obstacles" to reintegration.

5. Permission to appeal was granted by First-tier Tribunal Judge P J M Hollingworth on 31 May 2018.

The hearing before me

6. Mr Melvin provided myself and Mr Halim with a rule 24 response.

7. Mr Halim made the following points. The actual reasons stated by the judge in [17] for preferring the 2015 report to that from 2017 were unsustainable, with reference to the grounds of appeal. He had misdirected himself as to what the 2015 evidence was in fact saying in any event. At [16] the wrong test had been applied. Article 3 had been considered by the judge, when it had never been relied upon by the Appellant, and there had been no proper consideration of paragraph 276ADE(1)(vi) in relation to the evidence as a whole as at the date of the human rights claim in June 2015. In addition, it was clearly the case that the Appellant had established a private life in the United Kingdom over the course of time. Mr Halim submitted that the errors were all material.

8. Mr Melvin relied on the rule 24 response. He submitted that the very significant obstacles test had in fact been considered and applied by the judge and that what is said in [18] was sustainable.

9. In reply Mr Halim responded to a point that I raised about materiality by submitting that the potential availability of treatment in Pakistan was certainly not fatal to the Appellant's case with reference to the 2015 medical evidence, not only from the consultant psychiatrist but the CBT practitioner and the consultant psychologist. There had been significant evidence to show serious mental health problems and, if removal were affected, an increased risk in suicide. It was the whole mental health picture that went to the article 8 claim, not simply a suicide risk. Finally, Mr Halim submitted that the trainee psychologist had been under the supervision of the principal clinical psychologist and there was no basis to reduce the weight placed upon the 2017 report.

Decision on error of law

10. As I announced to the parties at the hearing, I conclude that the judge did materially err in law in certain respects. The errors are as follows.

11. First, in my view the judge has failed to adequately assess the 2015 medical evidence in the context of a correct application of the test under 276ADE(1)(vi). The test was not whether there were "insurmountable obstacles" to reintegration on return, as stated by the judge in [16], but whether there would have been, as at the date of the human rights claim in 2015, "very significant obstacles" to such reintegration. The insurmountable obstacles test is higher than that which should have been applied and the very significant obstacles test is lower than that required under article 3. Insofar as [16] is concerned, there is no clear expression of the correct approach to paragraph 276ADE(1)(vi). I fully appreciate that the "very insignificant obstacles" test is referred to at the very end of [17]. However, there is nothing at that point to show that the judge considered the circumstances as at the date of the human rights claim, rather than simply the date of hearing. That is potentially significant in this case because earlier in [17] the judge had apparently concluded that the Appellant

was, at least in 2017, "improved" in terms of his mental health problems. Thus, it is not sufficiently clear to me that the judge was applying the correct test as at the date stipulated by the first paragraph under paragraph 276ADE (namely the date of application).

12. Turning to the medical evidence, and just leaving aside for the moment the 2017 report, the 2015 evidence emanated not simply from a consultant psychiatrist, but also from a consultant psychologist (who had also produced a report in 2016) and a CBT practitioner. Having read this evidence for myself and having regard to what the judge himself noted by way of the Appellant's counsel's submissions in [10], it is clear that the totality of this evidence indicated that serious mental health problems existed as at the time relevant under paragraph 276AD, and that the risk of suicide was one aspect of that. That evidence does indeed make reference to the Appellant's faith and the way in which this might potentially have acted as a bar to him actually carrying out any suicidal ideation. However, it is also said by the consultant psychologist that a return to Pakistan, the source of past traumatic events, would potentially have caused a deterioration and an increased suicide risk. This point is also made very clearly in the report of the consultant psychiatrist. In addition to the suicide issue, PTSD had been diagnosed and, importantly, severe depressive episode, something which the psychiatrist regarded as being at that time a barrier to any worthwhile treatment for PTSD. All of these issues, supported by what appears to have been unchallenged medical evidence, were relevant to the "very significant obstacles" test. In my view the judge has simply failed to address the evidence that was actually before him in the context of a correct approach to the legal framework.

13. Second, to the extent that it is relevant I agree with Mr Halim that the judge failed to provide adequate reasons as to why he preferred the 2015 psychiatrist report to the trainee psychologist report of 2017, at least in respect of the context in which this evidence was being placed. In my view there was certainly no basis for preferring the one to the other solely on the basis the author of the latter report was a trainee. As Mr Halim rightly observed, her report was prepared under the supervision of the principal clinical consultant psychologist. Beyond that, the 2017 report was prepared after a significant course of treatment had been undertaken by the Appellant and the author was clearly in a position to present a good overview of the Appellant's circumstances over two years after the psychiatrist's report had been prepared. In addition, I conclude that the judge has misinterpreted the contents of both reports in respect of the specific reason he has provided for preferring one to the other, namely an apparent reduction in the risk of suicide based upon the 2015 report. I have already mentioned that the 2015 report in fact refers to an increase in the risk of suicide on return notwithstanding the Appellant's faith. The 2017 report makes a similar point (page 58 of the Appellant's bundle). Therefore, at least on the face of it, the judge's sole reason for preferring one report to the other is based upon a flawed premise.

14. Third, in respect of [18], whilst the judge was entitled to take the lack of a work record into account, he has failed to make any reference or give any reasons for rejecting the relevance of the Appellant's long residence in this country and, significantly, his mental health problems and the specialist treatment received over

the course of time in relation to these. I conclude that the judge's finding that there was not even a private life established in this country is flawed.

15. In my view the errors are all material. It certainly cannot be said that taking the Appellant's case at its very highest, the appeal was bound to fail in any event.

16. In light of the foregoing I set the judge's decision aside.

Disposal

17. Neither representative suggested that this appeal should be remitted to the First-tier Tribunal. I entirely agree: remittals are the exception, not the rule.

18. Initially I was of the view that I could remake the decision based on the evidence currently before me. However, Mr Melvin made a fair observation in that the most recent medical evidence goes back to September 2017, now almost a year ago. In my view it would be of assistance to obtain more current medical evidence, even in brief form, to establish what the Appellant's present state of health and/or treatment is. Mr Halim saw the sense in this. Therefore I am adjourning this appeal for a resumed hearing before me in due course at which I will remake my decision in this appeal.

19. There is no reason to revisit the judge's findings that there is no NHS debt and that the Appellant was aware of his original asylum claim having been refused by the Respondent in 2003 and the subsequent appeal dismissed.

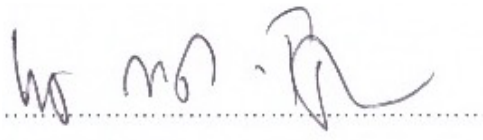
20. I will issue relevant directions below.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I adjourn this appeal for a resumed hearing before me in due course.

I make no anonymity direction



Signed Date: 19 August 2018

Deputy Upper Tribunal Judge Norton-Taylor

Directions to the Parties

1. **There is no need for additional oral evidence at the resumed hearing;**

2. **The core issue in the appeal is that of article 8, both within and without the context of the immigration rules;**

3. **The Appellant is to provide updated medical evidence and an amended skeleton argument in advance of the resumed hearing. The evidence and skeleton argument shall be filed with the Upper Tribunal and served on the Respondent no later than 14 days before the resumed hearing;**

4. **The Appellant shall file with the Upper Tribunal and serve on the Respondent a copy of the skeleton argument that was before the First-tier Tribunal. This shall be done no later than 14 days from the date of the hearing before me.**