Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10068/2019 (A)

THE IMMIGRATION ACTS

On the papers	**Decision & Reasons promulgated**
On the 23 July 2020	**On 4 August 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

GURJIT SINGH
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hussain ('the Judge') promulgated on 13 December 2019 which dismissed the appellant's appeal on human rights grounds.

2. Permission to appeal was granted by another judge of the First-tier Tribunal on 20 April 2020; the operative part of the grant being in the following terms:

> "2. The grounds argue that the Judge failed to take into consideration all the medical evidence, mistakenly believed that an employment letter referred to the Appellant rather than his brother and failed to properly consider the medical evidence.

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3. In the decision it appears that the Judge may have mistakenly believed that a letter written by an employer referred to the Appellant when in fact it referred to his brothers employment, thus leading the Judge to draw adverse conclusions about the honesty of the witness. It is also arguable that the Judge failed to appreciate the extent of medical evidence that was placed before him."

3. In light of the Covid-19 pandemic arrangements, made to enable the Upper Tribunal to continue with its decision-making role, directions were sent to the parties on 18 May 2020 advising them of the provisional view that the question of whether the Judge had made an error of law material to the decision to dismiss the appeal can be made on the papers and inviting the parties to make written observations both in relation to that issue as well as in relation to whether a material error of law had been made.

4. The Overriding Objective is contained in the Upper Tribunal Procedure Rules. Rule 2(2) explains that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues.

5. Rule 2(4) puts a duty on the parties to help the Upper Tribunal to further the overriding objective; and to cooperate with the Upper Tribunal generally.

6. Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008 provides:

'34.—

(1) Subject to paragraphs (2) and (3), the Upper Tribunal may make any decision without a hearing.

(2) The Upper Tribunal must have regard to any view expressed by a party when deciding whether to hold a hearing to consider any matter, and the form of any such hearing.

(3) In immigration judicial review proceedings, the Upper Tribunal must hold a hearing before making a decision which disposes of proceedings.

(4) Paragraph (3) does not affect the power of the Upper Tribunal to—

(a) strike out a party's case, pursuant to rule 8(1)(b) or 8(2);

(b) consent to withdrawal, pursuant to rule 17;

(c) determine an application for permission to bring judicial review proceedings, pursuant to rule 30; or

(d) make a consent order disposing of proceedings, pursuant to rule 39, without a hearing.'

7. The appellant's submissions, in addition to making further comment upon the pleaded grounds, challenge the suitability of the error of law question being decided on the papers asserting, in summary, consideration of the issues on the papers alone in an appeal against the decision of the First-tier Tribunal cannot ensure that the overriding objective of dealing with cases fairly and justly is met, that the importance of the outcome of the human rights claim to the parties can constitute a reason to convene a hearing to decide the relevant question, that if the issue were decided against the appellant his only potential recourse would be to seek permission to appeal to the Court of Appeal at which point he would need to show that his appeal engaged elevated principles of the second tier appeals test, that the Presidential Guidance Note imposes a hurdle which is in some way already higher than the one posed by the second appeals test, that the importance of an oral hearing to a fair outcome has long been acknowledged in the courts, that the Directions do not give any indication of why the Upper Tribunal considers that in this case the issue identified at paragraph 2(i) can fairly and justly be dealt with on the papers nor indicate whether the Tribunal has formed any preliminary view of the merits of the appeal and if so what that view is. At [26] of the appellant's submissions it is written:

> "26. For all the above reasons, the appellant submits that his appeal requires a hearing and that it would not comply with the overriding objective to decide the issues identified in paragraph 2(i) of the Directions without one. The above submissions would apply with equal force whether the appellant were the asylum claimant (as here) or the Secretary of State. To the extent that they refer to the value of oral advocacy they will always apply to both parties in the case. It follows that the appellant considers that an oral hearing is appropriate in this case and would go further: in the circumstances of this case, fairness and justice require one. It is submitted that, in view of the circumstances created by the Covid-19 pandemic, the hearing should be conducted remotely via video conferencing facilities, as the issues identified in paragraph 2(i) of the Directions will not require the appellant to give evidence."

8. The Secretary of State has set out her view in a Rule 24 response dated 8 June 2020 in which submissions are made in relation to the question of whether an error of law has been made and at [17] requesting an oral hearing, without giving reasons why this is required.

9. The use of different methods of disposing of cases is not unique to the Upper Tribunal. The impact of Covid-19 has required temporary arrangements to be made across all jurisdictions to ensure access to justice remains. The Upper Tribunal has a discretionary power, as noted above, to determine the merits of a case on the papers. The judge who issued the directions sent to the parties on 18 May 2020 did not record any provisional view regarding the merits, or otherwise, of the

appellant's challenge as this was not the purpose of that document which was solely to advising the parties of the position and give them the opportunity to comment upon it.

10. The appellant's submission that consideration on the papers alone cannot ensure that the overriding objectives of dealing with cases justly and fairly is met is a submission without arguable merit. It may be that some cases cannot be disposed of in this manner but that is a fact specific consideration. It is too wide a submission to claim that determining matters on the papers alone will breach the overriding objective. Failed challenges to remote hearings/decisions in other jurisdictions and the recent refusal in the High Court of an application for a stay on the Covid-19 practice directions pending the outcome of a pending judicial review claim demonstrate the acceptance of the current arrangements at this time.

11. The appellant's submission that the importance of the outcome of a human rights claim can constitute a reason to convene a hearing to decide the relevant questions may be correct if, on the facts of a particular case, it is deemed inappropriate for there to be a remote hearing. That is a fact specific assessment.

12. The Covid-19 directions in the Upper Tribunal have no impact upon the second appeals test before the Court of Appeal. The directions do not impose a higher hurdle upon a prospective appellant as the directions relate to procedural aspects of how the Upper Tribunal is to proceed in the circumstances of a particular case. If when considering the exercise of discretion a judge of the Upper Tribunal gets it wrong, such that any subsequent determination on the papers is unfair, that decision may be challengeable to the Court of Appeal in the normal manner. The second appeal criteria have not been shown to be unfair or is it shown that the Upper Tribunal direction creates a barrier to a party being able to make an application for permission to appeal to that court if appropriate in all the circumstances.

13. The appellant's submission that the importance of an oral hearing to a fair outcome has been acknowledged by the courts is noted. Although a number of authorities are specifically referred to in the pleadings they appear to relate to the ability of an individual to give oral evidence as part of the fact finding process and do not specifically appear to relate to the question under consideration in this appeal, which is whether the First-tier Tribunal has made a material error of law. Such question is ordinarily determined by submissions by legal representatives without oral evidence being given. Indeed the appellant's submissions fail to establish that on the specific facts of this case that there is any requirement for oral evidence to be given.

14. In terms of the ability of the advocates to make submissions in relation to the core issue; it is not made out that these need to be delivered in an oral form. The appellant's representative, Mr Spurling of 10 King's Bench Walk, is an experienced specialist immigration practitioner and it is not claimed in his written submissions that he has been unable to set out in writing all that he would have said orally on the appellant's

behalf. Similarly the author of the respondent's Rule 24, Mr Melvin, makes no such claim.

15. I consider in light of all the available material that it is appropriate in all the circumstances of this case to exercise discretion to determine the issue of whether the Judge has made an error of law material to the decision to dismiss the appeal on the papers. I find this is in accordance with the overriding objectives. It has not been made out it will deny any party the opportunity to have this matter considered in a fair and just manner at this stage.

Background

16. The appellant is a citizen of India born on 25 April 1986. He entered the United Kingdom on 3 April 2011 lawfully with a student Visa valid to 26 March 2012 although his leave was curtailed on 26 January 2012 due to his non-attendance at his college. On 17 December 2015, the appellant applied for an EEA Residence Card as confirmation of a right to reside in the United Kingdom under Community Law which was refused. A further application on 15 January 2018 also under Community Law was refused too. On 6 December 2018, the appellant applied for Leave to Remain on the basis of private life which was refused on 2 May 2019 which is the decision appealed before the Judge. The appellant's status in the United Kingdom has therefore always been precarious as it has been either temporary in nature or as a result of the appellant overstaying after is lawful leave was curtailed.

17. Having considered the written and oral evidence the Judge sets out findings of fact from [32] of the decision under challenge. This is a human rights appeal in which the question is whether the removal of the appellant from the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention).

18. The Judge did not find the appellant has established the existence of family life between relatives in the United Kingdom or that there are insurmountable obstacles to his integration into India for the reasons given in the decision and as set out in the Reason for Refusal letter; leading to a conclusion the appellant had not established an entitlement to remain in the United Kingdom under the Immigration Rules.

19. In relation to the position outside the Rules the Judge writes:

> "49. Insofar as the appellant's claim outside the Immigration Rules is concerned, it is now well established that where an applicant fails to make a case within the Immigration Rules, his circumstances would have to be exceptional to justify the grant of leave outside the Immigration Rules. With judicial approval, the Secretary of State's definition of "exceptional" is that the refusal leads to unjustifiably harsh consequences. In my view, whilst the appellant's desire to stay in this country is wholly understandable and whilst the medical facilities in India may not be of the same quality as is available to him in this country, it cannot be said that the standard of treatment available whether for depression or epilepsy is such that the appellant would suffer from undue harshness.

> 50. In assessing the proportionality of the appellant's removal, I have of course taken into account the public interest considerations in Section 117B of the Nationality, Immigration and Asylum Act 2002. In so doing, I note, and it is a point accepted by the appellant's counsel, that immigration control is in the public interest. I note also that the appellant probably speaks English although I have not been presented with any English language qualifications nor heard the appellant give evidence but infer that from the length of his residence here. It is likely that the appellant's brother has the financial means to support him. However, balancing the public interest in immigration control and the adverse impact on the appellant by removal, the conclusion to which I have come is that the decision not to grant him Leave to Remain is proportionate in all the circumstances."

Grounds and submissions

20. The appellant asserts the Judge has erred in law relying on three grounds.

21. Ground 1 asserts the Judge's finding that it was not accepted there is dependency in the case between the appellant's relatives of such a degree as to amount to family life is vitiated as a result of the Judge failing to engage with the full extent of the evidence about the appellant's needs and assistance given by his brother and sister-in-law in considering his dependence which it was said extended beyond emotional ties creating article 8 family life between them.

22. Ground 2 asserts the Judge erred in the treatment of evidence in claiming the only medical evidence directly supporting the appellant's claim to being an epileptic was a letter dated 19 September 2018 from his GP in [36] when further medical evidence was available in the appellant's bundle, in failing to take adequate account of the description of the appellant's needs in the witness statements in the appellant's brother, his cousin, and other statements from witnesses, and misdirected himself that the employer's letter in the respondent's bundle referred to the appellant working when the letter does not relate to the appellant but to his brother Amarjit Singh. In relation to the medical evidence it is asserted the Judge failed to draw clear conclusions about his medical condition, speculating about the extent of the appellant's health before he left India [40] raised a question not put to the appellant at the hearing, making confusing statement at [41], and incorrectly stated at [44] that the appellant did not see a medical practitioner until July 2018 which is said to be incorrect as the appellant has received treatment for his epilepsy since 2012. The grounds assert proper assessment of the medical evidence would establish that article 8 family life rights were engaged and have a material effect on the weight of the interest relevant to the balancing exercise.

23. Ground 3 asserts a failure to give reasons for material credibility findings in failing to give sufficient reasons for rejecting the evidence of the appellant's brother about the extent to which the family in India will

be able or willing to support the appellant. The grounds assert the Judge gave no reason for rejecting the evidence of the brother other than he did not believe it. The grounds assert not believing the evidence is a conclusion not a reason for that conclusion meaning the Judge failed to give sufficient reasons for rejecting material evidence.

24. The above grounds are set out in further detail in the application for permission to appeal.

25. The Secretary of State asserts no arguable error, stating at [4 – 15] of the Rule 24 response:

> "4. It is submitted that the FtT, considered the medical evidence provided at paragraphs 6, 10, 11, 12, 14, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29. The FtT judge made his findings on that evidence from paragraph 32 of the decision.
>
> 5. At paragraph 35 the Judge makes findings on two points, i) unexplained how the appellant could make such a coherent statement to his solicitors yet is unable to give oral evidence as so unwell and, ii) unexplained what 24-hour a day care the appellant needs albeit undisputed that the appellant suffers from epilepsy. The Judge gives his reasons for these findings, at p36, those being that the medical evidence (GP) only begins in September 2018 and the GP letter does not explain what helps the appellant needs and neither does it state 24 hour (round the clock) is necessary. The Judge notes the significance of the failure of the sponsor's wife to give evidence in court as she is one giving the 24-hour care. The Judge also notes a significant lack of evidence from the "cousin sister" who cares for the appellant whilst both his brother and his wife are out working.
>
> 6. The Judge also finds, briefly at p37, that no explanation is given to the point in the Refusal letter that the appellant has been working since 2018.
>
> 7. That specifically rejects the point raised, only at the hearing, that there is family life going beyond normal emotional ties between adult siblings for the purposes of article 8. (p38)
>
> 8. The Judge proceeds to consider and make findings on, the private life of the appellant from p39 of the decision. The judge firstly considers the medical evidence (from p40-43) of epilepsy and depression accepting that the appellant does suffer from epilepsy but going on to find, giving his reasons, why the brother's evidence has been untruthful with respect the lack of family home in India and the fact that the appellant has 3 sisters and a brother who would be able to collect any funds remitted to India. The Judge also finds that, having found that the appellant did not address the point of employment in the RFRL, that there was no reason why the appellant could not collect any remitted funds himself.

9. The Judge continues to address the issue of depression, from p44, observing that the evidence from the GP begins only in 2018 and noting that the appellant does not appear to be receiving any therapy for the depression and the only reference to medication comes from the Expert report and not the list of medication supplied by the GP.

10. The Judge notes at p45, that the expert did not engage with the claim that the appellant held down a job nor does the expert engage with the cause of the depression. The Judge also finds the lack of explanation why the GP has not been involved, given the claim that the appellant goes to A&E checkups, with the diagnosis of Depression and PTSD.

11. It is submitted that the Judge has made clear findings on all the core aspects of this appeal. The Judge has addressed the family life aspect, rejecting that for reasons given. The judges considered the Private life aspect being the medical evidence of epilepsy and depression and again make findings on those aspects of the appeal.

12. It is also clear that the judge has found the brother/sponsor to be an unreliable witness for reasons given.

13. The medical evidence ground of appeal has no merit as this is no more than argument based on weight given to the medical evidence and not an interpretation of that evidence.

14. The employment evidence is set down in the RFRL (Stonebridge contracting solutions since September 2018 Annex D of the HO bundle). It is a matter for the appellant to address this claim which he has failed to do.

15. The judge had given clear reasons for rejecting this latest attempt by the appellant to remain in the UK and those reasons are ones that are sustainable in law."

Error of law

26. The letter from Stonebridge Contracting dated 16 October 2018 appearing at Annex D of the respondent's bundle is clearly said to relate to a Mr Amerjeet Singh, born on the 28 April 1975 who has worked on a self-employed contract for that organisation since 17 September 2018 which, at the date of the letter, was still ongoing. The Judge at [37] writes:

> "37. The appellant's claim that he requires round-the-clock watch because of his epilepsy is inconsistent with the evidence referred to in the refusal letter of the appellant working. It is significant that neither the appellant nor his brother have commented on this point explicitly raised in the refusal letter."

27. The respondent in the refusal letter wrote, noting the independence psychiatric review relied upon by the appellant:

> "While the assessment is informative, it is not from a registered NHS consultant and with regard to the opinion of the psychiatrist stating she does not believe you are fit to fly, you have provided evidence to show that you are currently working for Stonebridge contracting solutions and have been doing so since 17 September 2018, it is stated in the letter you have provided from your employer that this contract is ongoing, therefore it is accepted that you are of a reasonable level of mental and physical fitness and would not face any major obstacles in flying. You are over 18, of an employable age and the skills you have gained in the UK will assist you with obtaining further employment in India where you can enjoy your full rights as a citizen."

28. It is accepted that in believing the employers letter related to the appellant the decision maker and Judge have made a mistake of fact. The question of whether the Judge's error in relation to this point is material depends upon the consideration of the decision as a whole.

29. It is not made out that as a result of the depression and epilepsy suffered by the appellant returning him to India will lead to a breach of article 3 ECHR on the basis of the evidence before the Judge and the recent decision of the Supreme Court in AM (Zimbabwe) [2020] UKSC 17.

30. Whether family life recognised by Article 8 exists is a factual question. The Judge concluded that the appellant had not established that the level of dependency between himself and adult family members in the United Kingdom was of such a degree as to enable it to be found that family life recognised by article 8 existed. At [38] the Judge comes to that conclusions for the reasons set out in the preceding paragraphs, [33 – 38], which are in the following terms:

> "33. I first begin by considering the appellant's family life claim. That claim is predicated on the assumption that since 2011 when the appellant came here, he has been dependent on his brother Mr Amarjit Singh as well as the brother's wife Barbara. It is asserted that the degree of dependency between them is such as to go beyond normal emotional ties in relationships of the kind in this case. Therefore, the family life the appellant enjoys with his sibling and his siblings wife is such as to amount to family life for the purposes of Article 8 of the Human Rights Convention.
>
> 34. The question to determine is the nature of that dependency. Although the appellant did not adopt his written statement as his evidence in chief, he did not give any oral evidence at all because it was claimed by his expert that he was not fit do so. I have taken into account his written statement as well as the testimony of the brother.
>
> 35. The case raises a number of interesting questions. The first of those is how it is that if the appellant is so unwell as to be unfit to give evidence, yet he was able to make, what appears to be, a perfectly coherent statement for the Tribunal? That question was never answered. Be that as it may, the claim is that the appellant is reliant on his brother and his wife for financial and

emotional support. No further details is given in relation to either of those save for a claim by the appellant's brother that the appellant requires round-the-clock support without explaining what that is. Given that it is undisputed that the appellant suffers from epilepsy, I inferred that he could suffer a fit at any time which means to safeguard him, someone is always around him. The evidence does not support that inference.

36. I say this because, firstly, the only medical evidence directly supporting the appellant's claim to be an epileptic is a letter dated 19 September 2018 from his GP which merely states that the appellant has suffered from seizures since the age of 8 and was last seen by a neurologist for his epilepsy in April 2018. He has "written" to the doctor explaining that he needs help from his sister in law and his brother on a daily basis. The doctors letter does not elaborate on what that help is. Nor is any reference to the appellant requiring him to be watched around the clock. Indeed it is difficult to see how such support can be provided given the appellant's brother's admission in evidence that until July 2018 when the appellant first reported his depression to his GP, the appellant simply stayed at home whilst he and his wife were out working. It is not clear when but it is said that the appellant's brother's wife is now at home and kindly provides great assistance and help to him without explaining what that assistance is. It is significant that the only person who potentially is capable of being around the appellant round-the-clock was the appellant's brother's wife who chose not to give evidence in court. Nor did the "cousin sister" who was claiming to have been with the appellant when his brother and his wife were out working.

37. The appellant's claim that he requires a round-the-clock watch because of his epilepsy is inconsistent with the evidence referred to in the refusal letter of the appellant working. It is significant that neither the appellant nor his brother have commented upon this point explicitly raised in the refusal letter."

31. The Judge clearly took into account the evidence that was provided in support of the appellant's claim that family life recognised by article 8 existed between him and his UK based relatives. Notwithstanding the error in relation to the assertion the appellant was employed by the construction company the Judge identifies a number of concerns arising from the evidence that have not been shown to be irrational or not reasonably open to the Judge. The Judge's comment that the claim the appellant requires round-the-clock supervision as a result of his epilepsy which could only be provided by either the appellant's brother, the appellant's brother's wife or his "cousin sister" was not supported by sufficient evidence from those individuals is one properly open to the Judge.

32. The burden of establishing an assertion the nature of the relationship is sufficient to engage article 8 lies upon the appellant to the civil standard, the balance of probabilities. The Judge's finding that the

appellant had not established the degree of dependency was sufficient to establish family life exists is clearly a finding within the range of those available to the Judge and has not been shown to be infected by arguable material legal error.

33. In relation to the assertion the Judge erred in law in failing to consider the medical evidence the references contained in the Rule 24 reply to where such issues were considered by the Judge is factually correct.

34. The Judge refers to the letter from the GP dated 19 September 2018 but the appellant claims there was further medical evidence at page 77 of his appeal bundle referring to what are described as 'nocturnal seizures' on 13 November 2014 on 14 May 2012. What is not disputed by the Judge is that the appellant suffers from epilepsy. At [40] the Judge finds:

> "40. That claim is based firstly on the appellant's medical condition of suffering from epilepsy and secondly, his depression. That the appellant suffers from epilepsy is not questioned for a very good reason. That reason is that the appellant's bundle contains a plethora of evidence short of a comprehensive medical report that suggests that he suffers from that condition. It would have been helpful to the appellant if there was a detailed report describing the seizures and the effect on him on a day-to-day basis. The unanswered question in this case is why, if the appellant suffered from seizures such that he was incapable within 6 months of arriving here to continue with his studies, coupled with depression to which I shall turn later, he was sent to this country in the first place. The risk of not being able to continue studies and the difficulty of living in an unfamiliar environment would have been obvious to his family members. I remind myself that at that time, the appellant's father was still alive. Why then did they send him to this country unless, of course, it was intended that after coming here he would continue to overstay. The other unanswered question is, why having his leave curtailed in 2012 and when his father was still alive, the appellant was not returned to India because it would have been self-evident that he is not medically fit enough to continue?"

35. At [42] the Judge writes:

> "42. There is no medical report as indicated earlier as the likely prognosis and therefore the inference I draw is that the appellant will have to live with the epilepsy the rest of his life. In terms of medical treatment, the appellant's doctors report provides a list of medications that the appellant receives including for epilepsy, Tegretol. The Secretary of State asserts that treatment for epilepsy is available in India. The appellant has not denied this nor provided any background material to show that the medical treatment that the appellant receives in this country would not be available in India."

36. In relation to family connections and availability of support in India, upon return, the Judge writes at [43]

> "43. … Insofar as emotional support is concerned, although his father passed away in 2013, the appellant still has his mother,

> brother and 3 sisters. Whilst they may have their own lives, I do not accept that they will not give emotional support that he needs. The appellant's brother in this country is keen to keep him here and to this end, in my view, was untruthful when he claimed that the appellant would not have a home to go to having previously said that his mother lives in their own home. He was also in my view not been truthful when he said there will be no one available to collect the money that he is willing to send for his brother to India. There is absolutely no reason why between 3 sisters and a brother, there will not be one who will be able to collect any funds sent to him. Indeed there is no reason why if the appellant was able to hold down a job in this case, would not himself be able to receive the funds directly."

37. Whilst the Judge's comments regarding the appellant's employment are infected by the error referred to above it is not made out the Judge has erred in his conclusions regarding the availability of support in India. The Judge had the benefit of considering all the evidence in the round and did not find that it was credible that the appellant would be effectively abandoned by his family on return. Similarly it is not made out that the Judge's finding that family members will be in a position to collect remittances from the UK which could be used to fund the appellant's lifestyle and provide for him is a finding outside the range of those reasonably available the Judge on the evidence. Those findings are adequately reasoned.

38. In relation to the appellant's assertion he suffers from depression Judge finds at [44 – 47]:

> "44. The appellant has enlisted the assistance of a consultant expert psychiatrist who has written two reports. The first report is appended in the respondent's bundle and is dated 9 November 2018. Based on what appears to be an interview with the appellant, the expert comes to the conclusion that the appellant suffers from severe depressive episode, without psychotic symptoms. It is worthy of note that this appellant who suffers from such a serious condition did not see a medical practitioner until July 2018. No explanation was given for this. The appellant's brother was clearly evasive in relation to the question of when it is that the appellant was first referred for medical attention. He seemed to oscillate between the appellant being seen by a private medical practitioner and being referred to the GP without being specific as to when. The letter from the GP dated 19 September 2018 says that the appellant reported feeling depressed. There is no evidence in the appellant's bundle he has received any kind of therapy for that condition. The only reference to medication is in the experts report where he notes that the appellant receives an antidepressant called Mirtazapine without citing the source for that. The GPs list of medication produced at page 17 of the appellant's bundle does not show any medication for depression.
>
> 45. I also find it worthy of note that this expert did not engage with the Home Office's claim to the appellant on the one hand was

severely depressed and the other, held down a job. Nor does the expert explain the origin of the causes of the depression and a further diagnosis he makes of PTSD. In the addendum report stated 16 October 2019 in which the expert report rules the appellant to be unfit to give evidence, he notes that the appellant's condition has deteriorated since he saw him in 2018 triggered by the refusal of his "asylum" application. Strangely in my view, the expert suggests that the appellant goes to the A&E for a full physical check up and assessment by the mental health rather than the appellant's GP which would be the normal point of call. Nor does the addendum report explained why, if the appellant's condition has so severely deteriorated, there is no medical report from those treating him.

46. Another point worthy of note is that in his original report, the expert at Paragraph 13.1 asserted that whilst the appellant "appeared severely depressed"; no evidence of thought disorder (disjointed thinking) was apparent. Yet the appellant's brother in paragraph 8 of his statement claimed that the appellant had "cognitive issues caused as a result of epilepsy". Having regard to the totality of the evidence before me, the conclusion to which I have come is that whilst some weight is deservedly given to the expert report which diagnoses the appellant as suffering from depression, I do not accept that the appellant's condition is as severe as is made out to be nor that he suffers from PTSD.

47. The symptoms described by the appellant and the diagnosis made are conditions common in this country as in other countries. No evidence has been adduced to show that medical treatment for such conditions is not available in India."

39. The Judge was not required to set out or make findings on each and every aspect of the evidence the tribunal was asked to consider. What is clear from reading the decision as a whole is that the Judge did take all the evidence, medical and otherwise, into account and made findings upon the same which are supported by adequate reasons which have not been shown to be outside the range of those reasonably open to the Judge on the evidence when considered as a whole.

40. The weight to be given to the evidence was a matter for the Judge and it has not been established there is anything arguably irrational in relation to the weight attributed by the Judge. The assertion the Judge failed to draw clear conclusions about the appellant's medical condition in the appellants grounds has no arguable merit as it is clear that the Judge accepted that the appellant suffers from epilepsy and depression but not PTSD for which adequate reasons are given when considering the evidence as a whole. The Judge notes the evidence provided regarding the treatment the appellant has received for his epilepsy but concludes that treatment for both epilepsy and depression is available in India.

41. Article 8 ECHR does not give a person the right to choose where they wish to live. The Judge clearly formed the view that this family unit wanted the appellant to remain in the United Kingdom even though he had no lawful right to do so.

42. It has not been made out the Judge erred in law in concluding (a) that adequate medical support, assistants, and treatment was available to meet the appellant's needs in India and (b) that there was a support network available to him from his family in India and financial support including by way of remittances from his brother in the United Kingdom.

43. Whilst the grounds disagree with the Judge's conclusions they fail to establish arguable legal error material to the decision to dismiss the appeal. The appellant's status in the United Kingdom has always been precarious warranting little weight being attached to the private life he has developed. In the alternative, even if as the appellant asserts he had established family life with his brother and sister-in-law in the United Kingdom it would arguably make no difference. The relationship will form part of the appellant's private life in any event which was properly considered by the Judge. The appellant seeks to challenge the 'steppingstones' set out by the Judge in arriving at the finding the appeal was dismissed. What the appellant fails to do is to establish that the Judge's conclusion that the respondent's decision is proportionate falls outside the range of findings reasonably open to the Judge on the evidence.

44. The appellant's desire to remain in the United Kingdom, whilst understandable, is not sufficient. This appeal is dismissed.

Decision

45. There is no material error of law in the Immigration Judge's decision. The determination shall stand.

Anonymity.

46. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed……
Upper Tribunal Judge Hanson

Dated the 23 July 2020