IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003945

First-tier Tribunal No:
HU/61727/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 24th of December 2024

Before

UPPER TRIBUNAL JUDGE MEAH

Between

Zahida Parveen
(ANONYMITY ORDER NOT MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms A Jones, Counsel, instructed by Lincoln's Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 6 December 2024

DECISION AND REASONS

Introduction and Background

1. The appellant, a Pakistani national who was born on 19 December 1955, appeals against the decision of First-tier Tribunal Judge Mill (FtTJ) on 12 June 2024 ("the decision"). By the decision, the FtTJ dismissed the appellant's appeal against the respondent's decision dated 14 September 2023, refusing her human rights claim. That decision was made in response to the appellant's application to remain in the UK on human rights, Article 8 ECHR

grounds, with her son and his family and other family members who are also present and settled in the UK.

2. It was claimed that the appellant had entered the UK as a foreign visitor on 13 August 2014, on a Multiple Entry Visit Visa that was valid from 07 December 2012 to 07 December 2014. On 10 December 2014, the appellant applied for Indefinite Leave to Remain in the UK outside the Immigration Rules. This application was refused on 29 May 2015. An appeal against that decision was dismissed in the FtTIAC on 16 May 2017. The appellant was said to have become appeal rights exhausted 14 July 2017. She did not embark from the UK and stayed here illegally without lawful permission to remain. She then made the application to remain on human rights grounds to which this appeal relates.

The Grounds

3. The three grounds raised challenging the decision are that the FtTJ erred in his consideration on a medical report relied upon by the appellant where he made erroneous findings, that he failed to consider the medical evidence and considered matters that were irrelevant, and finally, that his assessment of the (the now defunct) Rule 276ADE(1)(vi) of the Immigration Rules, on 'Very Significant Obstacles' and Article 8 ECHR was unlawful.

4. Permission to appeal was granted by Upper Tribunal Judge Kamara on 09 September 2024, in the following terms:

> "1. The appellant seeks permission to appeal, in time, against the decision of First-tier Tribunal Judge Mill who dismissed the appeal following a hearing which took place on 11 June 2024.
>
> 2. It is arguable that the judge erred in purporting to assess the appellant's mobility during the hearing which took place remotely. It is further arguable that the judge erred in finding that the appellant had accessed NHS care in view of the evidence of private care adduced.
>
> 3. The grounds are arguable."

5. There was no Rule 24 response from the respondent.

6. That is the basis on which this appeal came before the Upper Tribunal.

Documents

7. I had before me a composite bundle which included the bundles relied upon by the parties in the First-tier Tribunal.

Hearing and submissions

8. Both representatives made submissions which I have taken into account and these are set out in the Record of Proceedings and need not be repeated here.

Discussion and Conclusions

Grounds 1 & 2 – Erroneous findings in relation to the medical evidence / Failure to consider and assess relevant medical evidence and consideration of irrelevant matters

9. I shall deal with Grounds 1 & 2 together at these are interlinked and are central to the issue in relation to the claimed errors in regards the medical evidence and the FtTJ's approach to this.

10. The FtTJ criticised the medical report from a Dr Uzma Qureshi, who was noted to be a consultant in Clinical Gerontology. He stated at [20] of his decision that:

> "I find that this independent medical report is very poorly set out. I further find that there are other difficulties with the report. It does not specify what documents were provided to the expert and the references are vague. Moreover, the report does not specify with clarity what the Appellant's various diagnoses are. There is reference to a list of medications but no correspondence evidence that these have been prescribed. There are suggestions which I find purely speculative of diseases, such as autoimmune diseases, mentioned without any apparent basis, including multiple sclerosis. There are repeated references to specific non-medical terms which I find to be self-serving ie the requirement for the Appellant to require long-term personal care. The author places reliance upon what has been stated verbally to her, but there is no verification of this and the particular source is not clear. There is a suggestion of the Appellant being referred to numerous specialists – a clinical psychologist, but no clear mental health diagnosis and no ongoing mental health medication for depression (a neurologist haematologist and orthopaedic surgeon), though it is not clear why this would be. I find that the report, taken as whole, has been prepared to seek to bolster the appeal and is an attempt to depict someone who is more ill and has more medical conditions than actually exist. In the circumstances, I attach little weight to the report and find it self-serving…"

11. Firstly, the FtTJ's comment that the Medical Report omitted to specify documentation provided to Dr Qureshi was in error as this was in fact incorporated within the report itself contained at 'Section D' (PDF 118-121 of the stitched HMCTS/CCD bundle before the FtTJ). Furthermore, the FtTJ's assertion that there was no corresponding evidence of the list of medications set out at B.3.2 of the report was also erroneous as this also was contained in the report itself, at 'section D1' (PDF 118 of the stitched CCD bundle), where Dr Qureshi lists the medication quoted in the first instance by a Dr Termoi Selvadurai, upon which Dr Qureshi relied in citing

this in her own report. Therefore, contrary to the FtTJ's findings on this she had given provenance of the list of medication cited in her report.

12. In terms of the FtTJ noting that Dr Qureshi had made suggestions that were purely speculative of diseases, such as autoimmune diseases and multiple sclerosis mentioned without any apparent basis, references to these can be found at Section D.2.4.4 of Dr Qureshi's report under the heading entitled "Other body parts and tests required". This stated as follows:

> "Pain in other limbs, CSF tests to be carried out to look at white blood cells, bacteria, and other substances in the cerebrospinal fluid at present. In addition, Autoimmune disorders, such as GuillainBarré Syndrome and multiple sclerosis to be reviewed by relevant specialists in the future. Nuerovascular deficit also requires to be investigated. Arthritis is affecting the Appellant."

13. The grounds argue that Dr Qureshi was merely highlighting matters that might require future testing by the relevant specialists. She was not expressing an opinion on whether the appellant was affected with these diseases and neither was she asserting that she was so affected. The FtTJ had therefore reached findings critical of Dr Qureshi, consequently attaching little weight to her report, when in fact the FtTJ's criticisms were not supported in the evidence and were therefore mistaken, all of which amounted to a material error of law.

14. I accept that these grounds are made out as pleaded. The FtTJ has misread this and other parts of the medical report taking certain aspects of it out of context to then make findings against the appellant. This approach, in my judgment, is indicative of a failure to properly scrutinise the report as a whole resulting in erroneous findings based on purported shortcomings in the report which are not in fact apparent when the report is read fairly and holistically.

15. Further difficulties in the FtTJ's approach to the evidence from Dr Qureshi, is a failure to properly consider this in the light of the approach suggested in **JL (medical reports-credibility) China [2013] UKUT 145 (IAC)**, where it was stated in the headnote in relation to medico-legal reports relied upon in appeals such as this, that;

> *"(1) Those writing medical reports for use in immigration and asylum appeals should ensure where possible that, before forming their opinions, they study any assessments that have already been made of the appellant's credibility by the immigration authorities and/or a tribunal judge (SS (Sri Lanka) [2012] EWCA Civ 155 [30]; BN (psychiatric evidence discrepancies) Albania [2010] UKUT 279 (IAC) at [49], [53])). When the materials to which they should have regard include previous determinations by a judge, they should not conduct a running commentary on the reasoning of the judge who has made such findings, but should concentrate on describing and evaluating the medical evidence (IY (Turkey) [2012] EWCA Civ 1560 [37].*

> *(2) They should also bear in mind that when an advocate wishes to rely on their medical report to support the credibility of an appellant's account, they will be expected to identify what about it affords support to what the appellant has said and which is not dependent on what the appellant has said to the doctor (HE (DRC, credibility and psychiatric reports) Democratic Republic of Congo [2004] UKAIT 000321). The more a diagnosis is dependent on assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it (HH (Ethiopia) [2007] EWCA Civ 306 [23]).*
>
> *(3) The authors of such medical reports also need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed. They need to be vigilant that ultimately whether an appellant's account of the underlying events is or is not credible and plausible is a question of legal appraisal and a matter for the tribunal judge, not the expert doctors (IY [47]; see also HH (Ethiopia) [2007] EWCA Civ 306 [17]-[18]).*
>
> *(4) For their part, judges should be aware that, whilst the overall assessment of credibility is for them, medical reports may well involve assessments of the compatibility of the appellant's account with physical marks or symptoms, or mental condition: (SA (Somalia) [2006] EWCA Civ 1302). If the position were otherwise, the central tenets of the Istanbul Protocol would be misconceived, whenever there was a dispute about claimed causation of scars, and judges could not apply its guidance, contrary to what they are enjoined to do by SA (Somalia). Even where medical experts rely heavily on the account given by the person concerned, that does not mean their reports lack or lose their status as independent evidence, although it may reduce very considerably the weight that can be attached to them."*

16. The medical report from Dr Qureshi contained structured sections (section A-G) with main headings entitled 'The Writer', 'Methodology', 'History', 'Employment Position/Education', 'Diagnosis Opinion and Prognosis', 'Future treatment and rehabilitation'. Further subheadings under the main headings included 'Symptoms and Treatment Received', 'Consequential Effects', 'Medical Records Review', 'Examination', 'Psychological Examination', 'Inspection', 'Opinion', 'psychological impact', 'Medical Conditions'. Incorporated also within the report are the author's credentials at Section G under a separate heading entitled Medical Expert's Curriculum Vitae'. Dr Qureshi also explained the methodology she had adopted in preparing the report which included assessment of written and verbal information/documents provided to her, clinical examination of the appellant, written instructions from those representing the appellant, alongside being provided with relevant medical records, after consideration of all of which, she then gave her own professional medical opinion.

17. The FtTJ asserted that the report had been poorly set out and was prepared to seek to bolster the chances of success with the appeal. However, I struggle to see how or why the medical report merited this level of criticism, especially given the significant effort in providing what appears to me to be a well-structured format in which all relevant issues

likely to be relevant for the purposes of the appeal were considered. The difficulty is compounded further by the FtTJ's own errors in failing to consider the report holistically. In other words, it is difficult to contemplate that the FtTJ would have given such short shrift to the report and its contents had he given it the attention and scrutiny it required.

18. On the FtTJ's findings that Dr Qureshi had relied upon information and details provided by the appellant and her sponsoring son, this was also erroneous as the report did not rely solely on such information. It was sufficiently objective and compliant with the guidance in **JL China** and Dr Qureshi demonstrably considered numerous other factors before the medical diagnosis/prognosis and opinion she provided on the appellant. I therefore also find the FtTJ erroneously placed undue weight on this singular factor which resulted in a tainted view of the entire medical report, which the FtTJ also misquoted and failed to consider in its proper context and/or in the light of the totality of the evidence that he had before him. This included the witness evidence at the hearing. This approach was, in my judgment, both unfair and constituted a material error of law.

19. Finally on these grounds, another concern raised was the FtTJ purportedly assessing at [21] the appellant's mobility whilst conducting the hearing over Cloud Video Platform in the FtTIAC Virtual Region. This was one of the factors noted in the grant of permission. I accept that this, when considered in the light of the other errors by the FtTJ, amounted also to a material error given that the FtTJ had medical evidence indicating, amongst the appellant's other multifarious health issues, one of poor mobility. The FtTJ's findings at [21] that the appellant was 'independent', which appears to be concomitant to, and informed solely by his observation that the appellant was able to 'move to and from the video screen' was not a finding that was open to him given his failure to properly assess the medical evidence that had been placed before him. It is also inherently problematic that an observation by a judge over a video platform on an appellant's ability to mobilise within a confined space in a single room, then being used to support a finding that the appellant was independent. This was especially given the medical evidence the FtTJ had before him which supported a contrary view, the substance of which appeared, for the best part, to be unchallenged by the respondent at the First-tier Tribunal hearing, other than that which was stated in the respondent's review from its Pre-Appeal Review Unit at [24]-[29], where focus was on alternative treatments in Pakistan and consideration of the appellant's claim under Article 3 ECHR. The medical evidence ought to have therefore been given credence over the FtTJ's own unqualified observations on the appellant's ability to mobilise.

Ground 3 – unlawful assessment under Paragraph 276ADE(1)(vi) and Article 8 ECHR

20. It was argued here as a corollary to the first 2 grounds, that the FtTJ's subsequent assessment of the appellant's claim at [26]-[27] on the

threshold of 'very significant obstacles' in reference to the nature of the appellant's family life with her son and daughter-in-law in the UK at [32], and on the assessment of proportionality at [40] and [42], were also therefore flawed. This was on the basis that FtTJ had emphasised the appellant being independent, being able to meet her own needs and requiring only a marginal degree of support.

21. In short, I accept that this ground is made out. Though the FtTJ has accepted the appellant's medical diagnosis, the approach to the medical report and the medical evidence as a whole, has infected his approach to the assessment on the wider Article 8 ECHR question, both within and outside the framework of the Immigration Rules. Compounding this is the FtTJ's error in noting incorrectly that the appellant was not financially independent when she was reliant upon her sponsoring son to meet her maintenance needs which is sufficient to be deemed as being financially independent as per **Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58 [2018] 1 WLR 5536**. The FtTJ also erroneously noted the appellant having accessed the NHS for her medical treatment whereas there was no dispute between the parties that the appellant was not using the NHS, and that her treatment in the UK was being privately funded.

22. The appeal was heard and dismissed almost 6 months ago, and I do not consider that it would be appropriate to preserve any of the findings of fact made by the FtTJ. The appeal must be considered afresh, with the benefit of any additional up to date medical evidence.

23. Accordingly, in applying **AEB [2022] EWCA Civ 1512** and **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)** , I have considered the general principle set out in statement 7 of the Senior President's Practice Statement. I consider, however, that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process.

Notice of Decision

24. The decision of the FtTJ sent to the parties on 12 June 2024, involved the making of a material error of law. It is set aside in its entirety.

25. The appeal is remitted back de novo to the First-tier Tribunal at Manchester to be heard by any FtTJ other than FtTJ Mill.

S Meah
Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 December 2024