



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/47856/2013

THE IMMIGRATION ACTS

Heard at Field House
On 6 August 2014

Determination Promulgated
On 12 August 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS MASHAL JARRAL
(No Anonymity Direction Made)

Respondent

Representation:

For the Appellant: Mr S Kandola a Senior Home Office Presenting Officer

For the Respondent: the respondent attended but was not legally represented

DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department ("the Secretary of State"). The respondent is a citizen of Pakistan who was born on 19 January 1987 ("the claimant"). The Secretary of State has been given permission to appeal the determination of First-Tier Tribunal Judge Seifert ("the FTTJ") who allowed the claimant's appeal against the Secretary of State's decision of 12 November 2013 to refuse to vary her leave to remain in the UK

and to remove her by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. On 6 September 2011 the claimant entered the UK with entry clearance as a Tier 4 (General) Student Migrant for a period expiring on 7 November 2012. On 25 October 2012 she applied for indefinite leave to remain as a dependant relative of her brother, Mr R B Ullah.
3. The Secretary of State refused the application because the Immigration Rules (formerly paragraph 317) no longer contained a provision which might allow her to remain as a dependant of her brother. The application was considered outside the Rules and the Secretary of State concluded that the claimant had not shown that there were compassionate or compelling circumstances justifying granting her leave exceptionally. She had the option of returning to Pakistan and applying for entry clearance from there. Article 8 human rights grounds were considered under the Rules but the claimant did not have a partner or child in the UK so that the application was refused on family life grounds. Private life grounds were considered under paragraph 276ADE. However, the claimant did not have 20 years residence. She was born and raised in Pakistan and had not lost all social, cultural or family ties with that country.
4. The claimant appealed and the FTTJ heard her appeal on 19 March 2014. The claimant attended but was not legally represented. The Secretary of State was represented by counsel. The FTTJ heard evidence from the claimant. The FTTJ found the claimant to be a credible witness. Her brother is a British citizen and lives here with his wife and two young children. The claimant came here as a student on 6 September 2011 with leave until 25 October 2012. She completed her course. She was offered a job but did not work as she did not have permission to do so. In 2012 her mother and father came to the UK. Her mother is 56 and her father 66 years of age. Her father suffers from mental health problems, dementia and has had two heart attacks. Her mother suffers from anxiety and depression. Initially, the claimant lived with her brother and his family and later her parents joined them. The accommodation was insufficient and the claimant is now living at a different address with her parents, a short distance from her brother. The claimant is not working and looks after her parents.
5. The FTTJ accepted that the claimant had no family in Pakistan. Her brother lived permanently in the UK and she had another brother living in Canada. Since her parents came to this country she has had no home in Pakistan. It was accepted that she would not be able to find a job there in the tourism industry.
6. The FTTJ found that the claimant met the requirements of paragraph 276ADE(vi) of the Rules. She said; "Looking at her circumstances as a whole, all of her family, apart from her brother in Canada, are in the UK. In Pakistan she lived with her parents. Her parents are now living in the UK and she continues to live with them here. She has no relatives in Pakistan, no job there

and her evidence was that all her connections and family are now in the UK. Although she initially came here as a student for a temporary period during her studies, her circumstances had changed by the time that leave expired. Having considered the evidence I am satisfied that she has no ties, including social cultural and family ties with Pakistan.”

7. The FTTJ went on to find that, had she concluded that the claimant did not meet the requirements of paragraph 276ADE(vi) she would have gone on to find that, considering the Article 8 grounds outside the Rules, the claimant had established a family life with her parents in the UK and that to remove her would constitute a disproportionate interference with her right to respect for her family life. The FTTJ was satisfied that the relationship between the claimant and her parents extended beyond normal emotional ties.
8. The Secretary of State applied for and was granted permission to appeal. There are three grounds of appeal all of which argue that the FTTJ erred in law. The first submits that the FTTJ erred in her interpretation of “no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK” and had failed to apply the guidance contained in Ogundimu (Article 8 - new rules) Nigeria [2013] UKUT 60 (IAC) (18 February 2013). The second ground argues that the FTTJ misdirected herself in concluding that there was a family life between the claimant and her parents. The third submits that if, as the Secretary of State contended, the claimant had no right to remain on Article 8 human rights grounds under the Rules then she had failed to apply the two stage test as to whether there were arguably good grounds for granting leave to remain outside the Rules and if so whether there were compelling circumstances not sufficiently recognised under them.
9. Since the hearing before the FTTJ the claimant has submitted to the Tribunal a bundle of original documents which she tells me were handed up to the FTTJ but returned after inspection. At the hearing before me the appellant was accompanied by her brother and I allowed him to assist her, although most what was said came from the claimant. I explained the procedure to them, what I was required to do and said that I would assist her as best I could within the limits of impartiality.
10. Mr Kandola relied on the grounds of appeal and provided me with a copy of Ogundimu. He drew my attention to the explanatory note and paragraph 125. The test was an exacting one. The FTTJ had not referred to Ogundimu and had failed to conduct a rounded assessment of the claimant’s circumstances. The decision was a remarkable one in the light of this authority.
11. In relation to the alternative conclusion reached by the FTTJ, Mr Kandola submitted that she had failed to have regard to Gulshan (Article 8 – new Rules – correct approach) Pakistan [2013] UKUT 640 (IAC) (17 December 2013) principles. I was asked to find that the FTTJ had erred in law, to set aside her decision and to remake it without the need for an adjournment or further

evidence. In reply to my question Mr Kandola accepted that the Secretary of State had not challenged the FTTJ's findings of credibility or fact. He also accepted that "no ties" could not mean absolutely no ties at all; for example the mere fact that an individual had retained the nationality of the country to which it was argued he or she should return would not be a bar.

12. The claimant and her brother emphasised that before she left Pakistan to come here as a student she had lived with her parents in rented accommodation. They were supported by her brother in this country. She had made it clear to the FTTJ that it would not be safe for a young single woman to go and live on her own in Pakistan. When she was living there she never went out without her mother. She no longer had any ties in Pakistan and her only family contacts were her brother in the UK and her other brother in Canada who was married with children. When she lived in Pakistan she had two close female friends but both had left the country, one to Canada and the other to Australia. She had never worked in Pakistan. When she came to this country as a student she had intended to go back and live with her parents. However, after she came here, her parents came here as visitors. Whilst they were here her father suffered two serious heart attacks and also had dementia. She said that her understanding was that normally the Secretary of State would not consider an application for leave to remain by a visitor but exceptionally in her parents case their applications for indefinite leave to remain were granted in March 2012. At the hearing before the FTTJ she had handed in the bundle of original documents which contained evidence about her parents' state of health. These had been handed back to her. Subsequently she had resubmitted them to the Tribunal

13. I reserved my determination.

14. The relevant portion of paragraph 276ADE of the Rules is subsection (vi) which, in the version in force at the date of the application, provided that one of the requirements to be met by an applicant for leave to remain on the grounds of private life in the UK was that he or she is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which she would have to go if required to leave the UK.

15. The explanatory note to Ogundimu which is part of the determination of Blake J states;

1. *The expectation is that it will be an exceptional case in which permission to appeal to the Upper Tribunal should be granted where the lodging of the application for permission is more than 28 days out of time. Where, in such a case, a judge is minded to grant permission, the preferable course is to provide an opportunity to the respondent to make representations. This might be achieved by listing the permission application for oral hearing.*

2. *The introduction of the new Immigration Rules (HC 194) does not affect the circumstance that when considering Article 8 of the Human Rights Convention “for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in [this] country very serious reasons are required to justify expulsion.” The principles derived from Maslov v Austria [2008] ECHR 546 are still be applied.*
3. *Paragraph 399(a) of the Immigration Rules conflicts with the Secretary of State’s duties under Article 3 of the UN Convention on the Rights of the Child 1989 and section 55 of the Borders, Citizenship and Immigration Act 2009. Little weight should be attached to this Rule when consideration is being given to the assessment of proportionality under Article 8 of the Human Rights Convention.*
4. *The natural and ordinary meaning of the word ‘ties’ in paragraph 399A of the Immigration Rules imports a concept involving something more than merely remote or abstract links to the country of proposed deportation or removal. It involves there being a connection to life in that country. Consideration of whether a person has ‘no ties’ to such a country must involve a rounded assessment of all of the relevant circumstances and is not to be limited to ‘social, cultural and family’ circumstances.*

16. Paragraph 125 of Ogundimu states;

“Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.

17. Paragraph 123 of Ogundimu states:

“The natural and ordinary meaning of the word ‘ties’ imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person’s nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.”

18. I find that there were a number of elements which were relevant to the question of whether the claimant had ties to Pakistan. On the one hand she is a citizen of that country; she has lived there for most of her life, much longer than she has been in the UK (she lived there from birth until 2011); the language she spoke was her mother tongue, although she now speaks excellent English; she was steeped in and accustomed to the culture of Pakistan and was mostly educated there. On the other hand whilst she had close family ties to Pakistan when she left the country mainly to her mother and father these have ceased. Her mother and father are now living in this country with indefinite leave. She is living with and looking after them and, because of their ill-health, they need to be looked after. One brother is living nearby with his wife and children and her other sibling, a brother, is living in Canada with his wife and children. The FTTJ found and was entitled to find that she no longer had any relatives or connections in Pakistan. The family home in Pakistan was rented and is no longer available for her. She never worked in Pakistan and, as a single woman, would only go out if accompanied by a member of the family. As a single woman living on her own with no family or other relatives she would not be safe.
19. In *Ogundimu Blake J* explored one aspect of the natural and ordinary meaning of the word “ties” concluding that it involved more than merely remote and abstract links to the country of proposed removal. Another related aspect is important. I consider that “ties” imply something more than factors which may associate an individual with a particular country. Put another way, they must connect, link or bind an individual to that country. I follow the guidance in *Ogundimu* that ties are “a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin.” The factors which associate the claimant with Pakistan; nationality, language, length of residence and familiarity with the culture are in the light of her changed circumstances merely remote and abstract links to that country. The factors which bound the claimant to Pakistan, most importantly her mother and father, no longer exist in that country. The same strong family ties, particularly for an unmarried daughter who is now looking after her parents, are in the UK.
20. I find that the FTTJ reached conclusions open to her on all the evidence and that in relation to her primary conclusion there is no error of law.
21. In the light of this conclusion it is not strictly necessary for me to make findings as to the claimed errors of law in relation to the FTTJ’s subsidiary conclusion. However, had I come to the conclusion that it was not open to her to allow the appeal under paragraph 276ADE(vi) of the Rules, I would have found that, following *Gulshan* principles, and in relation to the first test there were arguably good grounds for granting leave to remain outside the Rules. In relation to the second test there were compelling circumstances not sufficiently recognised under the Rules. It was open to the FTTJ to find that

the relationship between the claimant and her mother and father did amount to a family life because in her case the links between adult members of the family amounted to more than normal emotional ties. She was living with her mother and father. Because of their ill-health they needed her care and she provided it.

22. I cannot see any evidence which supports the suspicion set out in the reasons for the grant of permission to appeal to the Upper Tribunal that “the facts are all indicative of a carefully manipulated migration to this country”. In reply to my question, Mr Kandola said that the Secretary of State did not rely on or adopt this.

23. I find that the FTTJ did not err in law and I uphold her determination.

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Signed
Upper Tribunal Judge Moulden

Date 7 August 2014