



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/46643/2014

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 26<sup>th</sup> October 2015

Decision and Reasons Promulgated  
On 24<sup>th</sup> November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

**SAKINA BIBI**  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Khan, Solicitor of Bukhari Chambers  
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. Before the Upper Tribunal the Secretary of States becomes the appellant. However, for the avoidance of confusion and to be consistent, I shall continue to refer to the parties as they were before the First-tier Tribunal.
2. On 7<sup>th</sup> July 2015 Upper Tribunal Judge Taylor gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal Malik in which she

allowed the appeal against the decision of the respondent to refuse leave to remain on the basis of private life applying the provisions of paragraph 276ADE of the Immigration Rules.

3. In the grounds of application the respondent contended that the judge had failed to engage with the “legal threshold” namely the existence of very significant obstacles to the appellant’s integration into her country of origin, Pakistan. Whilst the judge accepted that medical treatment was available for the appellant in Pakistan, she had not examined evidence to show that the appellant could not secure paid carers in that country. In particular there was no evidence to corroborate the assertion made by the appellant’s son about an absence of carers. Further, the judge was in error in failing to give consideration to the possibility of the appellant’s close relatives accompanying her either temporarily or permanently to Pakistan to offer care or set up a regime of care. Attention is also drawn to the judge’s acceptance that Section 117B(5) of the 2002 Act indicates that little weight should be given to a private life established by a person at a time when their immigration status is precarious yet decided it would be “unreasonable” for her to be separated from her family in UK.
4. At the hearing before me Mr McVeety confirmed that the respondent relied on the grounds which I have summarised above. He also drew attention to the judge’s conclusion in paragraph 37, by reference to a GP report, that there was no deterioration in the appellant’s health since her arrival in the United Kingdom. He therefore argued that, on the basis that the appellant was in the same medical condition now as she had been in Pakistan, she could return there to live as she had before. In paragraph 36 the judge acknowledges that the appellant had lived alone in Pakistan from 2008 until she came to the United Kingdom in 2014. He also contended that the judge’s Article 8 decision, outside the Rules, was inadequate failing to give proper weight to the public interest as defined in Section 117B(5).
5. Mr Khan drew my attention to his skeleton argument. In this he refers to the appellant’s previous visits to the United Kingdom and her compliance with visa requirements on each occasion even if she had overstayed her last entry visa. He also emphasised that it would be unsafe and unreasonable for the appellant to live in Pakistan where the appellant has no relatives and her health is of concern to her UK based children. He also contended that the judge had applied the law correctly and directed herself appropriately in reaching a decision which was open to her. He further submitted that the judge had properly identified very significant obstacles to the appellant returning to Pakistan. No detailed consideration of Article 8 issues outside the grounds was required as the judge had found that the appellant came within the provisions of paragraph 276ADE(5).

### **Conclusions**

6. At the end of the hearing I announced that I was satisfied that the decision showed an error on a point of law and, having regard to the nature of that error, it would be appropriate for the appeal to be heard afresh before the First-tier Tribunal. The reasons for those conclusions now follow.
7. At paragraph 37 of the decision the judge accepts that the report from the appellant’s GP did not speak of any deterioration in her health. Thus, it appears irrational that the judge should go on to decide that the appellant would not be able to access the required level of care if returned to Pakistan when she had already lived alone in that

country for several years following the unfortunate demise of her husband in 2008 whilst apparently caring for herself. The judge does not tackle that self-evident inconsistency when reaching conclusions about care.

8. The judge also accepts the assertions of the appellant's son that it would not be possible to obtain assistance for the appellant in Pakistan without considering whether or not evidence should have been provided to support that arguable assertion such as a statement from a medical practitioner in Pakistan to confirm the absence of suitable care facilities in the appellant's home area.
9. Without cogent reasoning, the judge's conclusion that the appellant would face very significant obstacles to her re-integration into Pakistan also appears perverse particularly when the judge has not explained why the appellant cannot return to live in the situation which prevailed for her in Pakistan before coming to the United Kingdom in 2014, especially when the appellant's son has confirmed that he could afford to pay for his mother's care if returned.
10. The judge's conclusions are therefore flawed for the preceding reasons and the decision should be set aside. The matter should be heard afresh by the First-tier Tribunal. Having regard to the need for fresh findings of fact the remittal to the First-tier Tribunal accords with the Practice Statement for the Tribunal by the Senior President of 25<sup>th</sup> September 2012 at paragraph 7.2.

### **Decision**

11. The decision of the First-tier Tribunal shows an error on a point of law and is set aside. The appeal is remitted to the First-tier Tribunal for hearing afresh.

### **DIRECTIONS**

12. The appeal is to be heard afresh before the First-tier Tribunal sitting at Manchester on a date to be specified by the Resident Judge at that centre.
13. An Urdu interpreter will be required for the hearing.
14. The time estimate for the hearing is two hours.
15. The appeal should not be heard before Judge Malik.

Signed

Date

Deputy Upper Tribunal Judge Garratt