Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/19495/2016**

THE IMMIGRATION ACTS

Heard at Field House
On 5 January 2018

Decision & Reasons Promulgated
On 12 January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

ENTRY CLEARANCE OFFICER - Sheffield

Appellant

and

PARVEEN MAHMOOD
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Dr M Qazi (Sponsor)

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but, to avoid confusion, the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Shore,

promulgated on 29/09/2017 which allowed the Appellant's appeal on article 8 ECHR Grounds

Background

3. The Appellant was born on 14/11/1957 and is a national of Pakistan. The Appellant applied for entry clearance as an adult dependent relative to join her son, a British citizen, in the UK. On 28/07/2016 the Secretary of State refused the Appellant's application.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Shore ("the Judge") allowed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 25/10/2017 Judge Chohan gave permission to appeal stating

> 2. The grounds argue that the Judge erred in law by simply relying on the evidence of the sponsor but not considering objective evidence; no reasons have been given as to why the appellant's care in Pakistan could not continue; and that the Judge has failed to consider section 117B.
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> 3. It is clear from the Judge's decision that the appellant receives assistance from private carers in Pakistan. However, at paragraph 32 of the decision, the Judge concludes that the care would be better provided by the sponsor in the United Kingdom. No reasons have been given as to why the appellant's care could not continue in Pakistan. It does not appear to be the case that medical treatment for the appellant's ailments is not available in Pakistan. In my view, it is open to argument that the Judge has given inadequate reasons for the conclusions made.
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> 4. Accordingly, there is an arguable error of law.

The Hearing

5. Mr Walker for the respondent adopted the terms of the grounds of appeal. He told me that the Judge had not considered a number of factors and had not taken the correct approach to the evidence. He argued that there had been no reliable evidence addressing the suitability of continuing caring Pakistan, or alternative arrangements which could be made by the sponsor from the UK. He acknowledged that the Judge had found the sponsor to be a credible witness but said that the Judge's findings had been coloured by his impression of the sponsor. He argued that the Judge had failed to consider section 117B of the 2002 Act in carrying out his proportionality assessment. He urged me to set the decision aside.

6. Dr Qazi adopted the terms of his letter dated 4 December 2017, and told me that the decision does not contain a material error of law. He referred me to his CV & told me that he is a qualified and experienced medical practitioner, and so his

evidence about his mother's medical needs and the availability of care and treatment should be afforded weight. He explained the appellant's circumstances in Pakistan and that the appellant is financially dependent upon him. He told me that the section 117B factors have been addressed and that he is a man of significant means so that the appellant would not be a burden on the NHS. He referred me to background materials now produced about the availability of care in Pakistan. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The Judge's findings of fact start at [14] of the decision. At [27] and [28] the Judge finds the sponsor to be an entirely credible witness. Placing reliance on the sponsor's evidence, at [29] the Judge specifically finds that the appellant requires long-term personal care to perform everyday tasks. That is a finding which was open to the Judge to make on the evidence before the Judge. The Judge gives clear reasons for finding the sponsor to be a credible and reliable witness & for accepting the sponsor's evidence.

8. It is the Judge's job to assess credibility. That is exactly what the Judge did. The Judge sets out adequate reasons for placing reliance on the sponsor's evidence. The sponsor's evidence was sufficient for the Judge to make the findings at [29] and [34] that the appellant meets the eligibility and suitability criteria under the rules. The Judge applied the correct standard of proof and the correct burden of proof. The Judge's finding that the appellant meets the requirements of the immigration rules is unassailable. In Green (Article 8 – new rules) [2013] UKUT 254 (IAC) the Upper Tribunal said that "*Giving weight to a factor one way or another is for the fact-finding Tribunal and the assignment of weight will rarely give rise to an error of law*".

9. The Judge's finding, at [30], that the appellant meets the eligibility and suitability requirements of the rules is a finding that the appellant is an adult dependent relative of her son, the sponsor. That is a finding that family life within the meaning of article 8 exists between the appellant and the sponsor.

10. The Judge's findings in relation to article 8 are contained between [31] of [38] of the decision. The findings are brief, but there is sufficient there to demonstrate an adequate proportionality assessment. In essence, the Judge finds that because the appellants meet the suitability and eligibility requirements of appendix FM, and because the appellant is the dependent mother of the sponsor, then by analogy the respondent's decision is a disproportionate interference with the right to respect for family life.

11. In Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC) the Upper Tribunal held that in appeals against refusal of entry clearance under Article 8, the claimant's ability to satisfy the Immigration Rules is capable of being a weighty, though not determinative, factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control.

12. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the Judge draws from the primary data were not reasonably open to him or her.

13. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

CONCLUSION

14. No errors of law have been established. The Judge's decision stands.

DECISION

15. The appeal is dismissed. The decision of the First-tier Tribunal promulgated on 29 September 2017 stands.

Signed Paul Doyle Date 9 January 2018
Deputy Upper Tribunal Judge Doyle