



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04694/2019
HU/04697/2019

THE IMMIGRATION ACTS

Heard at a face-to-face hearing at Field House
On 2 June 2021

Decision & Reasons Promulgated
On 22 July 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR QAMAR ALI
MRS ANIS QAMAR

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Jones, Counsel instructed on a direct access basis
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

PROCEDURAL BACKGROUND

1. By a decision promulgated on 3 September 2020 I found an error of law in the decision of the First-tier Tribunal Judge I Ross itself promulgated on 29 November 2019, dismissing the Appellants' appeals against the Respondent's decisions dated 28 February 2019 refusing their human rights claims, made in the context of an

application to remain in the UK with their adult children and the families of those children who are settled in the UK. My error of law decision is appended hereto for ease of reference.

2. The Appellants are currently aged seventy-six and seventy-two years respectively. They pray in aid of their application their ill health and their relationships with their children and grandchildren. I come to the detail of the claims when dealing with the evidence below.
3. In my error of law decision, I gave directions for the filing of further evidence in anticipation of the need to deal, in particular, with the Appellants' medical conditions and the treatment available to deal with those conditions in their home country of Pakistan.
4. I also directed submissions in relation to the appropriate forum for determination of the appeals and to gauge who was likely to need to give evidence. That was with an eye to the specific vulnerabilities of the Appellants in the current Covid-19 pandemic. Following the parties' submissions, the Tribunal determined that the appeals should be heard at a face-to-face hearing due to the likely difficulties for the Appellants to give evidence remotely given their ages and infirmity. A face-to-face hearing listed in February 2021 had to be adjourned because of the restrictions then in place.
5. Although both Appellants attended the hearing with suitable precautions made for their situation (although both are now vaccinated against the virus), Ms Cunha indicated that she did not need to cross-examine the Second Appellant (who suffers from dementia and was therefore unlikely to be able to provide useful evidence) and would take a decision whether to cross-examine the First Appellant having heard evidence from the Appellants' adult children. In the event, it was unnecessary for her to cross-examine the First Appellant. I therefore heard oral evidence only from the three adult children. I consider both the oral and documentary evidence below but refer only to that evidence which is relevant to my determination of the issues.
6. In relation to documentary evidence, I have before me the Respondent's bundle, the Appellants' bundle as before the First-tier Tribunal ([AB1/xx]), the Appellants' supplementary bundle as before the First-tier Tribunal ([AB2/xx]) and the further supplementary bundle of documents filed as further evidence before this Tribunal ([AB3/xx]). In relation to the latter, that evidence was filed after the date provided for in my earlier directions, but Ms Cunha took no objection to the late filing and indicated that she was able to deal with it. I also had a skeleton argument from Mr Jones.

FACTUAL BACKGROUND

7. The Appellants are nationals of Pakistan. They are husband and wife. They have three adult sons living in the UK, Mr Fawad Qamar, Mr Syed Shahbaz Ali and Mr Fahim Ali.

8. Mr Fawad Qamar is married to Mrs Zahida Fawad. They have three daughters, [SW], [SZ] and [SI] (aged between thirteen and seven years) and a younger child aged one year. According to the documents at [AB1/140] they had leave to remain under the points-based system which was valid to March 2020. However, Mr Qamar's witness statement at [AB2/24] confirms that he and his family now have indefinite leave to remain. He has lived in the UK since 2009.
9. Mr Syed Shahbaz Ali ("Syed Ali") is married to Mrs Tasmia Shahbaz. They have three children – two daughters [SM] (aged nearly eight years), [SMS] (aged six years) and a son [SM] (aged three years). The Syed Ali family are all British citizens. They own their own property in the UK. The Appellants live with them.
10. Mr Fahim Ali is married to Mrs Alzaman Ishtiaq. They have two children aged three years and one year. There is no documentary information in the bundle as to their immigration status. According to the witness statement at [AB2/24], Mr Ali has indefinite leave to remain, having lived in the UK since 2007. His family live with Mr Syed Ali and his family as well as the Appellants.
11. The Appellants also have a son living in Dubai, Mr Qazafi Qamar. He is married with children, but it appears from the oral evidence I heard that, due to his immigration status now in Dubai, his wife and children have returned to Pakistan. The Appellants also have other family living in Pakistan, although they are not close family members.
12. The Appellants' three adult sons living in the UK are directors of a construction company, Brits Construction Services Ltd. It appears from the documents at [AB1/104-116] that this is a profitable enterprise. The documents at [AB1/117-128] show, for example, that Mr Syed Ali is able to pay himself around £1350 per month (net) by way of a salary. His wife also works earning just under £1000 net per month. There are documents also in that bundle showing that the company pays other of the family members a salary of roughly £1000-£1500 net per month. No issue is taken by the Respondent as to the family's ability to maintain and accommodate the Appellants. The Appellants would not of course be entitled to have recourse to public funds were they permitted to remain.
13. The Appellants have been visiting the UK since 2013. It appears from the evidence that they sold their family home in Pakistan in 2010 and thereafter travelled between Pakistan, Dubai and the UK. In the period 2013 to 2019, they visited the UK seven times. Those visits were for between three and five months on each occasion ([AB1/179]). The Appellants last entered the UK on 24 July 2018 on a multi visit visa valid from 9 February 2017 to 9 February 2019. On 17 January 2019 the Appellants applied to remain based on their family and private life. Those human rights claims were refused by the decisions under appeal.
14. In broad summary, the Second Appellant has a history of diabetes and hypertension. She is prescribed medication for those conditions. Whilst in the UK, she has also been diagnosed as suffering from vascular dementia. The more recent evidence (see

below) is that she has developed depression. The Second Appellant has been prescribed medication and received medical assistance whilst in the UK, but all has been paid for privately (with the exception of the Covid-19 vaccine which is only available via the NHS). The evidence is that she has regular reviews of her health but there is no evidence that she is receiving counselling or specialist care for dementia and mental health issues on a regular basis.

15. The First Appellant has less developed medical conditions, but his health is said to have deteriorated during the pandemic. According to the letter at [AB3/1], the First Appellant has sciatica and also problems with breathing and coughing due to a lung condition. He is prescribed anti-inflammatories and an exercise programme. He is trialling a new medication for his lung condition. Again, the First Appellant's treatment has been paid for privately.

THE LEGAL FRAMEWORK

16. It is accepted that the Appellants cannot meet the Immigration Rules ("the Rules") based on their family life. They are unable to meet the Rules as adult dependent relatives as they applied from within the UK. In relation to their private lives, the Appellants do not satisfy the Rules based on length of residence. It is asserted that there are very significant obstacles to their integration in Pakistan under paragraph 276ADE(1)(vi) of the Rules ("Paragraph 276ADE(1)(vi)"). Reliance is placed on the judgment in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 ("Kamara") and cases expanding upon what is there said. The test which applies to Paragraph 276ADE(1)(vi) is encapsulated in what is said at [14] of the judgment in Kamara as follows:

"In my view, the concept of a foreign criminal's 'integration' into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

17. The appeals fall mainly to be determined based on Article 8 ECHR outside the Rules. The Rules in relation to adult dependent relatives ("the ADR Rules") are however instructive as to the test which would apply if the Appellants were applying from outside the UK. I do not set out the ADR Rules in detail as it is accepted that the Appellants are unable to meet them. The recent judgment of the Court of Appeal in Mobeen v Secretary of State for the Home Department [2021] EWCA Civ 886 ("Mobeen") is instructive. That judgment in turn considers what is said in R (Britcits) v Secretary of State for the Home Department [2017] EWCA Civ 368

("Britcits"), in particular regarding the high threshold which would apply if the case were being considered within the Rules and the public interest being protected.

18. In short summary, if the application were being considered within the ADR Rules, the Appellants would have to show that "as a result of age, illness or disability [they] require long-term personal care to perform everyday tasks" and that they would be "unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they [would be] living" because either it is not available and cannot reasonably be provided or it is not affordable.

19. The Court of Appeal in Britcits said this by way of general observations about the ADR Rules:

"58. First, the policy intended to be implemented by the new ADR Rules, as appears from the evidence, the new ADR Rules themselves and the Guidance, and confirmed in the oral submissions of Mr Neil Sheldon, counsel for the SoS, is clear enough. It is twofold: firstly, to reduce the burden on the taxpayer for the provision of health and social care services to those ADRs whose needs can reasonably and adequately be met in their home country; and, secondly, to ensure that those ADRs whose needs can only be reasonably and adequately met in the UK are granted fully settled status and full access to the NHS and social care provided by local authorities. The latter is intended to avoid disparity between ADRs depending on their wealth and to avoid precariousness of status occasioned by changes in the financial circumstances of ADRs once settled here.

59. Second, as is apparent from the Rules and the Guidance, the focus is on whether the care required by the ADR applicant can be 'reasonably' provided and to 'the required level' in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed."

20. In relation to the Appellants' medical conditions, it is not suggested that removal would lead to a breach of Article 3 ECHR. However, their medical conditions are part of, indeed at the heart of, the Article 8 claim. The Appellants point to the judgment of the ECtHR in Bensaid v UK (2001) 33 EHRR 10 as well as the comments of Lord Justice Moses at [23] of the judgment in MM (Zimbabwe) v Secretary of State for the Home Department [2012] EWCA Civ 279. As was said by Lord Justice Laws in the later case of GS (India) and others v Secretary of State for the Home Department [2015] EWCA Civ 40, "failure under Article 3 does not necessarily entail

failure under Article 8". However, as he went on to say, "Article 8 cannot prosper without some separate or additional factual element which brings the case within the Article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with the paradigm."

21. The central issue in these appeals is whether the Respondent's decisions amount to a disproportionate interference with the family and private lives of the Appellants and also their families who, as I will come to below, may be impacted by the removal of the Appellants. The Appellants rely in this respect on the observations of the Court of Appeal in Secretary of State for the Home Department v Abbas [2017] EWCA Civ 1393 pointing to the "unitary nature of a family for article 8 purposes with the consequence that the interference with the family life of one is an interference with the rights of all those within the ambit of the family whose rights are engaged".
22. In terms of the assessment of proportionality, as the Supreme Court pointed out in R (Agyarko and Ikuga) v Secretary of State for the Home Department [2017] UKSC 11, that requires a balance of the strength of the public interest in removal against the impact on private and family life. In Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60, the Supreme Court advocated the use of a "balance sheet" approach.
23. Ultimately, the question for me is whether the decisions to refuse the Appellants' claims and therefore removal of the Appellants would have an unjustifiably harsh impact on all those affected by the decisions. When considering the public interest of removal, I am bound to have regard to the factors set out at section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B").
24. I do not need to set out the case-law beyond what I have already said as there was no dispute as to the tests which apply. I therefore move on to consider the evidence before me.

EVIDENCE

25. I heard oral evidence from the Appellants' three sons to which I refer as relevant below. I also have witness statements from them, their wives and letters from some of their grandchildren. In addition, I have documents relating to their medical condition, an expert report of Dr Livia Holden ([AB3/18-57]) dealing with the situation for elderly persons and availability of care in Pakistan and a report of Peter Horrocks, independent social worker, at [AB2/1-23] dealing with the family relationships in the UK and impact of removal of the Appellants. I refer to those documents as appropriate to the relevant elements of the claim.

The Appellants' Medical Conditions and Care Needs

26. Given the centrality of the Appellants' medical conditions to their claim, it is appropriate to turn first to the evidence about those medical conditions. Although there is earlier evidence, it is appropriate to consider those conditions in light of the most recent information. That appears in the letters from The Harrow Health Care

Centre. Dr Jane Woyka of that centre has provided letters dated 2 March 2021 at [AB3/1-2] dealing with both Appellants. I take each in turn.

27. Dr Woyka saw the First Appellant via video on 16 February 2021. The First Appellant is said to have day and night pain from his sciatica. He is also reported to have problems with breathing and coughing and is said to be “not as active and energetic as he was a year ago”. The First Appellant receives anti-inflammatories for his back condition and has been given an exercise programme. He is trialling a new medication for his lung condition. It is said that “previously the air quality in Pakistan has contributed to his irreversible lung condition and we would expect his breathlessness to deteriorate significantly should he be in Pakistan”. The First Appellant’s back condition is said to “impair his ability to provide the level of support, care and supervision required by his wife”. Dr Woyka concludes this letter by summarising that “[a]s a couple their medical conditions would significantly deteriorate should they be returned to Pakistan.”
28. Dr Woyka saw the Second Appellant via video with her son, Fawad Qamar. The doctor summarises the Second Appellant’s condition as an “established diagnosis of hypertension, type 2 diabetes, hyperlipidaemia, memory impairment/dementia, depression”. She again says that the Second Appellant has deteriorated during the pandemic. She says the following:

“She is more argumentative and forgetful and her memory is worsening. She is depressed. She is also fatiguing more easily and gets tired after 2 rounds of the dining table. She has not been outside for a year due to the pandemic. She now refuses to take some of her medication specifically Vitamin D supplement. Her condition has declined in respect to memory as is the natural history of a dementing process. Her mood has deteriorated due to lack of stimulation and requirement to be inside and lack of mobility which contributes to this.”
29. As to prognosis, Dr Woyka says that there will be “ongoing decline of her cognitive function” as would be expected due to her condition. She also says that the Second Appellant’s other conditions would be better managed in the UK where her family will ensure that she takes her medication which she would not do if left to her own devices.
30. In terms of return to Pakistan, Dr Woyka says that the Second Appellant “is no longer able to function outside the ongoing and immediate support of her family in the controlled circumstances of the home. If there was provision for 24 hour supervision in Pakistan perhaps other family members who were able to take on her care then removal to Pakistan could be considered”. She repeats that the First Appellant is unable to undertake that role. In the event that the Appellants were removed without other family members to care for them, she repeats that all the Second Appellant’s medical conditions would deteriorate. Notwithstanding her observation that the family “are finding it difficult to manage [the Second Appellant’s] outbursts and refusal to take medication”, Dr Woyka considers that the Second Appellant’s family “are more likely to be successful in managing her within the bounds of the family.”

31. The most recent evidence of the Appellants' care needs appears in the witness statements of the Appellants' sons and their wives. Tasmia Shahbaz with whom the Appellants live says in her statement at [AB3/12-13] that the Second Appellant's dementia has "led to a noticeable decrease in her health and memory". She says also that the Second Appellant also has a "knee and back bone problem" and "has been on a wheelchair for the last few years". Although this is not mentioned in the doctor's letter, it is confirmed by the other witnesses.

32. The most complete documentary witness evidence as to the Appellants' condition and care needs appears, perhaps surprisingly, in the statement of Fawad Qamar who is the son not living with his parents. His statement is at [AB3/4-6] and is particularly detailed. In relation to the current condition of the Appellants he says this:

"Due to pandemic, the doctors have not booked any appointments. Therefore, if needed they do everything over the telephone. They do remote consultations. Before the pandemic, their appointments used to be every couple of months. Mum's condition has got worse since the pandemic. Due to Corona, she is not going outside. She is very stressed.

We have been protecting them a lot. Thankfully, they have had no serious illness during this time but they are under psychological pressure. They are fed up and know that if they were back in Pakistan, they would be allowed out. They blame us for locking them in. We believe they are actually only 'healthy' (in the sense they have not contracted any further illnesses) due to shielding and the extra precautions we have taken. We have ensured they have an ambient temperature; they are getting extra food/supplements (eg vitamin D tablets, orange juices, apples, bananas) on a more focussed basis to get their immune system better otherwise they are on their normal diet; and we are ensuring they are exercising.

Mum's exercise routine is that she walks in the hallway. My brother has a very long hallway. She can do 6-7 steps for a minute or two. My brother or his children help her. She does this usually after dinner, before going to bed. Outside, she has to be in her wheelchair and so does not walk outside. Additionally, she suffers from the cold. It directly attacks her throat and she has to gargle with hot water to get relief.

My father has back problems. He does light physical exercise. When Dad sometimes gets pain, we have to help but when he is better and he does it all by himself. He exercises for only 3 to 5 minutes daily."

33. The Appellants themselves have provided a letter which is dated 7 August 2019 and appears at AB1/93. They say that they are dependent on their children financially and physically but provide very little detail about their care needs. They say that they "feel more comfortable and mentally satisfied because all family members take care of [them]".

Availability of Care in Pakistan

34. I turn then to the evidence of care available in Pakistan. That evidence is to be found in the expert report of Livia Holden, MA, MPhil, PhD at [AB3/18-5]. Dr Holden is a "socio-legal scholar specialising in South Asia (India and Pakistan)". She researches

state operations in various fields. She has provided expert evidence in a number of immigration cases. Her expertise was not disputed.

35. Dr Holden opines that “the elderlies experience a high degree of social invisibility and neglect, which can lead to significant social barriers, economic impoverishment, and exclusion from even basic services”. By way of example, she points to a bill put forward in 2011 to improve facilities for senior citizens which had still not been approved in 2014 and to the lack of infrastructure to assist with things like mobility problems. Dr Holden also points to a continuing poor ranking of Pakistan in the Global Age Watch Index (92nd out of 96 countries). She refers at [14] and [15] to the lack of State income provision, short health life expectancy and prevalence of depression amongst the older population.
36. As Dr Holden points out and as was evident from the oral evidence I heard from the Appellants’ sons, there is a cultural expectation in Pakistani society that children will care for their elderly parents. That has an impact on the provision of alternative care facilities. Dr Holden sets out the prospect of alternative care for the Appellants at [25] to [38] of her report. The section relating to professional care is particularly relevant to my consideration and reads as follows:

“25. The precarious state of health of the Appellants will require competent attendants with nurse qualification. Furthermore, constant aid is necessary for the daily needs of the wife as specified in her children’s witness statements where they state that she is afflicted by arthritis, blood pressure and dementia and that she needs a wheelchair for outdoor mobility. The poor state of the wife’s physical and mental health is confirmed by Dr Jane Woyka, in her certificate dated 2 March 2021, who attests to her inability to accomplish basic chores as washing, dressing and cooking. Dr Woyka adds in her certificate dated 2 March 2021, that the husband who suffers from lung disease and sciatica, is not in the condition to provide the level of support, care and supervision required by his wife.

26. Very few medical institutions located only in big cities can supply the level of home assistance required by the Appellants health conditions. A medical institution, the Chughtai Lab in Islamabad offers to provide full day and night assistance and the price of the service is adjusted according to the different levels of competence. The Integrated Health Services (HIS) offers home nursing service, whose fees vary according to the nurse’s qualification and the service provided. However, both institutions do not provide specific assistance to individuals afflicted by dementia.

27. To the best of my knowledge there is a limited number of senior citizens living homes which offers accommodation facilities for elderly with 24 hours medical assistance and services tailored for the needs of elderly in Lahore. One of the few institutions which can provide in-house specialised service and accommodation for the elderly afflicted by dementia in Pakistan is the Second Home in Lahore whose rate starts at 60,000 Pakistani Rupee (£281.98) per months with a one-off fee of 30,000 rupee (£140.99).

28. An alternative to home care or residential care institution in Lahore might be the Alzheimer’s Pakistan day care centre, located in Johar Town. This centre offers activity and support free of charges to elderly individuals affected by Alzheimer and dementia. Whilst this unique institution in Pakistan is laudable, it is unlikely that it will help with

the necessary medical care needed by the Appellants since a doctor visits the Alzheimer's day care only every fortnight. Furthermore, the institution is meant to provide some hours of relief from the stress of assisting a person suffering from dementia to the informal caregiver, who is usually a healthy relative. Therefore, if there is not a healthy relative committed to provide care to the wife, it is unlikely that the Alzheimer's day care in Lahore will represent an effective solution to the Appellants' predicament.

29. If the Appellants relocated to Lahore, it is unlikely that the available home care services, which will provide medical and practical assistance, will offer them the kind of emotional and moral support, which in Pakistan is given by the family members. In addition, Appellants have to travel to a hospital for specific medical examinations and therapies. Therefore, the effectiveness of the home care service depends on the financial resources of the Appellant, on the logistic coordination of the different kind of services that the Appellant needs, and on the promptness to respond to situations of emergency without the support of relatives in Lahore."

37. Dr Holden also provides evidence about the availability of various kinds of domestic help and care. This is generally provided by Filipino maids. Dr Holden says that there is a complex procedure to hire such a maid and they are in any event unqualified to provide specialised care. The costs of recruitment are approximately £2000 and monthly salary of nearly £300 with an expectation that accommodation and food will also be provided. Other, unqualified domestic help is available but, says Dr Holden, "it comes with risks for the health and security for the Appellants". Those risks entail anything "from unreliability to complicity in robbery, kidnapping and murder". On a more general note, Dr Holden says that the elderly living alone are vulnerable to crime and violence and that families or individuals who can afford it are increasingly hiring private security guards.

38. As I have already noted, the Appellants have sold their family home in Pakistan. As such, Dr Holden also deals with the availability of sheltered accommodation for elderly people in Pakistan. Dr Holden says the following:

"43. While the need for shelters in Pakistan is described as being at unprecedented levels, the concept of shelters for the elderly overall, and in particular for the middle class and impoverished elderly, is relatively new. Moreover, recent efforts by government officials to establish shelter homes for the elderly nationwide have been vigorously contested by government officials because, it is argued, they undermine or contravene the Islamic injunctions for children to take responsibility for their elderly parents...

...

45. Shelters that accommodate individuals such as the Appellants are exceedingly rare. This factor is likely to hinder the elderlies' ability to seek and obtain secure long-term rooming or housing through public or private or non-governmental shelter systems or organizations. Moreover, the burden placed on existing low-income shelter or accommodation's options is increasing as a result of the growing proportion of individuals over the age of 60 in Pakistan, for whom no new or additional governmental resources have been allocated. Among existing options, shelter accommodations are predominantly for those individuals who have lost their homes

during, or migrated away from, natural disasters or conflict. It is therefore unlikely that the Appellants might easily resort to the service of a shelter home. “

39. Dr Holden repeats, in relation to palliative care, the expectation in Pakistan that such will be provided by family members. Accordingly, there is a lack of such care available outside the family unit.
40. Dr Holden deals with the availability of medical treatment at [54] to [83] of her report. In summary, she says that those who depend on the public health system struggle to access specialist services. She says also that those patients with higher incomes often jump the queue due to corruption within the level of service provision. Generally, she points to there being “moderate to acute resource shortages, understaffing and the non-availability of essential medicines and equipment”. Staffing provision is made more difficult by “high levels of absenteeism among key personnel”. Dr Holden points out that patients in Pakistan have unrestricted access to prescription drugs with some limited exceptions (although she makes that point in the context of the risk of overdose and inappropriate medication due to lack of regulatory and professional control). Medical expenses for conditions most likely to be suffered by elderly patients have increased ([54] to [61] of the report).
41. In terms of private healthcare, Dr Holden says that this is “an unaffordable option for lower- and middle-income Pakistani citizens”. The other problem which Dr Holden identifies for the Appellants is accessibility. She says that the location of “the few reliable health care institutions in cities like Islamabad, Lahore and Karachi will impact on the finances of the Appellants should they choose to live in these cities”. Dr Holden also identifies concerns expressed about the quality of service offered by a particular hospital (Shifa Hospital) although I note that the footnotes in that regard date back over four to five years. The general problem is one of corruption and unprofessionalism ([62] to [66] of the report).
42. Based on the evidence of Dr Woyka, Dr Holden identifies a potential need for the Second Appellant to be able to access mental healthcare services in Pakistan. She says that “[i]n the low- to no-cost public sector, psychological treatment is not available at the level of primary health care services, from which patients are supposed to be referred to specialized care at secondary and tertiary health care facilities”. Only 0.4% of government health care budgets are said to be devoted to mental health care and specialized professionals are “rare” ([68] of the report). The statistics and reports relied upon at [69] of the report are somewhat dated to be of any assistance (dating from 2009 and 2014/15). Dr Holden says that “[t]o the best of [her] knowledge there are no primary public sector health services that provide specialized psychological treatment on an out-patient basis”. She also says that there are “very few low- to no-cost public sector preventative or symptomatic home- or community-based out-patient psychological support services available” ([72] of the report). At [78] of the report, Dr Holden says that there is health care available at a medium to high cost but that providers “are only rarely trained in psychology and mental health and generally speaking are unprepared to deal with the needs of unaccompanied or unassisted elderly”. Dr Holden points to the lack of specific

geriatric care and a negative attitude of the public towards the elderly which she says lead to fragmented treatment depending on the medical need. Finally, she says that there is a lack of understanding of dementia even among medical professionals in Pakistan.

43. Dr Holden identifies at [74] to [76] of the report the stigma associated with mental illness and the sometimes “abusive and violent practices” adopted to deal with those illnesses. She picks up this theme again at [84] to [95] of the report. At [86] of the report, she says this:

“For patients who experience and continue to experience any type or degree of mental health, even if mild, and/or are identified as having been diagnosed with a mental illness in Pakistan, there is a high risk that they will face a profound lack of social support as well as social isolation and financial impoverishment. Specifically, patients diagnosed with mental illnesses including emotional state due to stress, face a high degree of social stigma and exclusion by kin, community members, potential employers as well as treating healthcare providers. Exclusion might be especially exacerbated if the patients do not have senior male kin to take care of them or support from their families.”

The sources of that comment are somewhat dated (from 2014 or thereabouts) or are no longer available. In any event, as I will come to, the relevance of it to the Second Appellant’s situation depends, first, on the support available to her in Pakistan and, second, on her need for mental healthcare. Dr Holden says that there is a lack of understanding of dementia in Pakistan and therefore few care facilities available.

44. Dr Holden was asked specifically to deal with the possibility of the Appellants returning to live at Makkah Colony, Lahore where they lived in the past. The property where they lived is apparently owned by the Second Appellant’s sister who is said to be reluctant to allow them to live there again due to their illnesses. That is consistent with what Fawad Qamar told the independent social worker (see below). Even if they were able to live there, Dr Holden says that the living conditions in Makkah Colony are unfavourable to the Appellants. In short summary, she says that the Colony is in a densely populated area with limited green space, is overcrowded and suffers from poor management. She also says that there is a high level of crime.
45. In terms of the Appellants’ financial circumstances, Dr Holden says that the pension to which the First Appellant is entitled is below what is judged to be the minimum amount for a healthy life in Pakistan. Dr Holden says that this amount would be insufficient to enable the Appellants to return to Makkah Colony even if they wished to do so. That does not of course take account of what financial support the Appellants’ family in the UK may be able to offer.
46. The Appellants say in their letter that they don’t have a permanent home or close family members in Pakistan. They say that “due to [their] age it is very tiring and difficult to live in Pakistan”. That assertion is based on the difficulty of long-haul travel and finding accommodation.

47. Dr Holden's conclusions at [106] onwards of the report work on the assumption that the Appellants will have insufficient economic means and a lack of family support. Although I have dealt with Dr Holden's report in some detail and I do not doubt either her integrity or expertise, it appears that Dr Holden was not told, as I was in oral evidence, that if the Appellants were returned to Pakistan, one of the Appellants' sons would return with them. I was told by the Appellants' sons in oral evidence that the possibility of the Second Appellant going to live in a care home was inconceivable for them, whether that was in the UK or Pakistan. In either event, they said, the family would take care of the Second Appellant itself. Fawad Qamar also told me that the family could pay for whatever treatment was required in Pakistan. Syed Ali told me that "it was not about money, it was about care". He also said that his wife works full-time. Fawad's wife helps out but "if they needed help, they would get it if that was required".
48. To some extent, therefore, leaving aside the medical treatment available in Pakistan, the Appellants would have a similar level of family support in Pakistan. That would alleviate some of the problems of stigmatisation and cost which Dr Holden identifies in her report. It would however also have implications for the Appellants' family in the UK. That therefore leads me to consider the evidence regarding the impact of removal on both the Appellants and their family in the UK.

Impact of Removal

49. Reliance is placed in this regard on the report of Mr Peter Horrocks (at [AB2/1-23]). Mr Horrocks is an independent social worker. He qualified as a social worker in 1988 and has worked as a social worker, team manager and senior manager in statutory and non-statutory settings. His CV shows that he has experience working with children and vulnerable adults. He has worked with many nationalities. His report is dated 12 October 2019 and follows interviews with the Appellants and two of their sons in September 2019.
50. The information given to Mr Horrocks by Fawad Qamar is that the Appellants used their maternal aunt's property (I assume the property in Makkah Colony) as a stop gap between visits to the UK and Dubai having sold their own house. Fawad told Mr Horrocks that this property remained available to them but that the aunt would no longer let the Appellants live there due to their additional needs. The Appellants cannot live with their son in Dubai "because of issues around legal status". I was told by Fawad that in fact the family of the Appellants' son in Dubai has returned to Pakistan as he has a different job from his previous employment and his situation in Dubai is now more precarious. Syed Ali confirmed to Mr Horrocks that the wife and two eldest daughters of the son living in Dubai have returned to Pakistan "for educational reasons". They are living with the wife's family in Pakistan. I accept that evidence and that the Appellants could not go to live in Dubai.
51. Fawad told Mr Horrocks that the First Appellant "has no specific health issues" but due to general health problems associated with old age he is no longer able to look after the Second Appellant, particularly given her decreasing mobility. Mention is

again made of the Second Appellant being in a wheelchair. Fawad told Mr Horrocks that the Second Appellant has been in a wheelchair for five years because of “spinal weakness and knee problems”. The major problem however is said to be her dementia which makes travel very difficult.

52. The Appellants live with Syed Ali. He told Mr Horrocks that the First Appellant does not require personal assistance with self-care but, due to his cultural background, is unused to running a household. As already noted, he is said to be unable to assist the Second Appellant with her mobility issues. In terms of assistance needed by the Second Appellant, she is able to walk to the toilet unaided by holding herself against the walls and has bath rails to assist with bathing. She is said to be able to meet her own self-care “in a controlled and monitored environment” but is unable to perform household tasks. She cannot go out unassisted. She also needs help to attend medical appointments and is apt to forget to take her medication or to remember that she has already taken it. Notwithstanding her deteriorating memory, she is said to be “happy and relaxed” with when her children and their families. The same is said of the First Appellant.
53. Syed told Mr Horrocks that “the reasons for [the Appellants] to stay here in the UK are basically because they don’t have anywhere to go. Their care needs have increased significantly since previous visits and they are no longer able to live independently and to care for themselves”. It is “no longer viable or possible” for the Appellants to live as they used to by travelling between Pakistan and the UK/Dubai.
54. As I have already observed, I was told by the Appellants’ three sons in oral evidence that, if the Appellants were returned to Pakistan, one of the sons and their family would return. In terms of impact on the families, Mr Horrocks records at [3.13] of his report that Fawad Qamar runs his own business and Syed and Fahim Ali run their own business together. At the time of Mr Horrocks’ report, Fahim Ali had an “entrepreneurial visa” (I assume Tier 1 Migrant visa) and had been here for nine years. His return to Pakistan would involve losing his investment. It is not said whether the business could be run from outside the UK. The other sons have children of school age who are therefore in education in the UK.
55. Mr Horrocks sums up the situation for the Appellants in the UK at [4.2] to [4.8] of the report culminating in the following summary:

“4.8 The current situation is that the quality of life enjoyed by this elderly couple is good. Their practical care needs are being met and as Mrs Qamar’s dementia increasingly deteriorates, her situation is monitored and she accesses the additional support she requires. The current situation means that this elderly couple do not have to worry about any aspect of their practical care and they can enjoy the time they spend with their sons and grandchildren and this in turn is beneficial for their emotional well-being. During the period that they have lived in the UK the couple have become increasingly frail and dependent, but the presence of their family around to provide them with care has ensured that under the circumstances they have been able to enjoy as good a quality of life as could be expected. Since they gave up their family home their lives have revolved around spending time with their sons and

families. They have now lived with Syed and his family and in close proximity to their two other sons and their families for a period of nearly one and a half years and they have become emotionally reliant on the presence of their loved ones in their day to day lives. The presence of their sons, daughter in laws and grandchildren have provide them with emotional support and provided some counter-balance to the impact their increasing frailty and vulnerability has on their lives. The families provide them with social interaction, with [sic] occupies much of their time and interests.”

56. Mr Horrocks goes on to consider the impact if the Appellants are removed and their family remains living in the UK. He says that “this would have a profound and fundamental impact both on their emotional well-being as well as their practical care needs”. He says that they would have to make alternative living arrangements, lack the capacity to run their own household and to meet their own care needs. I do not need to dwell on the care aspect as Dr Horton has dealt with this scenario in more depth in her report and she has a greater expertise regarding the situation in Pakistan. Mr Horrocks anticipates that removal would lead to a downturn in, in particular, the Second Appellant’s mental health if she were forced to depend on external carers. Mr Horrocks says that the alternative option of one of the Appellants’ three sons going with them is “not viable”. This appears to be for business reasons and because of their family circumstances. There is no consideration why two of the brothers could not continue the business in the absence of one or whether the brother who returned could continue to be involved remotely from Pakistan. I consider the impact on the families below.
57. Mr Horrocks recognises in the section which follows the stress which is put on a relationship by caring for a parent with dementia. However, in this instance, it is his opinion that the relationship is improved. The three daughter-in-laws are said to work together to provide support. If the Appellants remain in the UK, Mr Horrocks envisages that care would continue to be provided in that way. That is consistent with the evidence I heard from the Appellants’ sons that the family would not countenance the possibility of the Second Appellant going into a care home.
58. In conclusion, Mr Horrocks recommends that the Appellants be permitted to remain in the UK. He opines that it would be in the best interests of both the Appellants and their family members in the UK.
59. I have already referred to the Appellants’ evidence that they feel “more comfortable and mentally satisfied” living with their family in the UK. They say that they have also enjoyed festivals during their stay. They say that their sons want them to stay in the UK and that they “also feel like staying here without the restriction to leave every 6 months”. They ask for permission to stay “without the hassle of travelling” and reiterate the evidence I heard from their sons that they have not and will not rely on public funds including publicly funded medical treatment.
60. I have dealt within my consideration of the evidence above with what is said by the Appellants’ three sons about the Appellants’ care in the UK. I have also referred to the oral evidence that, if the Appellants were returned to Pakistan, one of the families would return with them. I was told that no decision had yet been taken about which

of the sons would return. Of the three sons, only one (Syed Ali) is a British citizen. The other two sons have indefinite leave to remain. One, Fahim, is living with Syed Ali, his family and the Appellants. He has been in the UK since 2007. The other son, Fawad Qamar has lived in the UK since 2009. He does not live with the Appellants but has given a more detailed account of their care needs than his brothers (see his statement at [AB3/3-6]). His wife and one of his children have also provided statements/letter at [AB3/7-9]. He said in oral evidence that he was running a business here and his children are settled here. They have strong ties to the UK although he did also say that he goes to Pakistan occasionally. His in-laws live there.

61. Fahim Ali also confirmed that his mother-in-law lives in Pakistan. His wife is from Pakistan. They were unable to visit the country whilst his immigration status was being sorted out, but they visited in 2019 prior to the pandemic and stayed two months. He gave oral evidence about other relatives in Pakistan. The Second Appellant's sister remains in Pakistan. She is younger than the Second Appellant. She lives with her daughter. Her son lives in the UK, but Fahim said that he was presently in Pakistan visiting his mother. He also said that the First Appellant has a sister living in Rawalpindi who lives on her own there. She is younger than the Appellants (in her sixties). When asked whether the Appellants could go to live with her, he said that they could not because she lives in a different city and "we live in Lahore".
62. All the Appellants' sons have children. Fawad Qamar's children are aged between thirteen years and eighteen months. It may be that the youngest is a British citizen (depending on whether Fawad had indefinite leave when that child was born). There is however no evidence that this is so. The other children are citizens of Pakistan. The eldest would appear to have been born in Pakistan but has been here for over seven years. The other children were born and have grown up here. I have no evidence about the children other than their ages and that they must, because of their ages, with the exception of the youngest child, be in formal education here. I do however have evidence in Fawad's statement that those children have a close relationship with the Appellants. The children speak with their grandparents every day. During the pandemic, this has been remotely. The children talk to the Appellants in Urdu and are therefore able to communicate in that language.
63. Syed Ali is a British citizen and has lived here since 2003. His most recent statement is at [AB3/10-11]. His wife's statement is at [AB3/12-13]. They have three children aged between three and eight years. I have no evidence about them save that they are "deeply attached" to their grandparents and vice versa. Syed's wife says that the Appellants play "a huge role" in their and the children's lives. I assume due to Syed's citizenship that the children also are British citizens.
64. Fahim Ali's statement is at [AB3/14-15] and his wife's at [AB3/16-17]. They live with Syed Ali and his family. They have two children aged three years and one year. I do not know whether the younger of the two is a British citizen. That would depend when Fahim was granted indefinite leave to remain. Again, there is no

evidence that this is so. Again, the Appellants are said to have “a huge impact” on the children.

65. The Appellants’ sons say in their statements that they run construction companies, are successful and in a strong financial position. I have referred to the evidence about the company at [12] above. I accept the evidence that they have paid for the Appellants’ medical needs throughout. The only recourse that the Appellants have had to the NHS is the taking of the Covid-19 vaccination which was not available via private healthcare. I also accept their evidence that they could afford to continue to maintain and accommodate the Appellants in the UK without recourse to public funds.

DISCUSSION

66. I begin with Paragraph 276ADE(1)(vi). The Appellants are nationals of Pakistan. Over the past eight years, they have divided their time between the UK and Dubai, returning to Pakistan only between visits. They sold their permanent home there in 2010. However, they have lived, worked and brought up family in that country for over sixty years of their lives. Indeed, it appears from the Appellants’ own evidence that, even now, they are not unduly concerned about the prospect of life in Pakistan. Their concerns are that they would not be able to continue their travel as they have done in recent years and therefore would be separated from their family in the UK. They speak the language of Pakistan. They do not speak English. They would of course have to find a home to live in whether purchased or rented. However, their sons are financially secure and have made clear in their evidence that they would continue to support the Appellants if they had to return. The foregoing are all factors relevant to the test which applies. Having regard to what was said in Kamara, it cannot realistically be argued that the Appellants are not “insiders” in Pakistan. They are clearly culturally assimilated. They are very familiar with the way in which society works in Pakistan.
67. I have considered whether it could be said that the Appellants’ medical conditions affect their ability to participate in Pakistani society. There is a suggestion in the medical evidence that the First Appellant’s lung problems were exacerbated by the air quality in Pakistan and that his breathlessness would deteriorate if returned. I am not however entirely clear what specialist knowledge Dr Wokya has in that regard and the First Appellant does not say that the climate in Pakistan has been an undue problem for him in the past. It is fair to observe that the Appellants’ health case is focussed rather more on the Second Appellant’s situation than that of the First Appellant.
68. In relation to the Second Appellant, I have considered carefully the evidence of Dr Holden regarding the stigma associated with mental health problems. I am not entirely clear from the medical evidence whether the Second Appellant’s depression is separate from her dementia, part of it and caused by it or caused by the lockdown restrictions during the pandemic. It is suggested by Dr Wokya that the Second Appellant’s mood “has deteriorated due to lack of stimulation and requirement to be

inside and lack of mobility which contributes to this". That would tend to suggest that it is the lockdown restrictions which have played the greater part in the deterioration of the Second Appellant's mental health. There is however no evidence that this has deteriorated to the extent of a formal diagnosis of depressive illness. It is not clear whether the Second Appellant is in receipt of medication for depression but there is no evidence that she is for example receiving counselling.

69. I recognise that Dr Holden says in her report that there is a lack of understanding in relation to dementia and it may well be that the stigma which she says exists in respect of mental health also extends to those suffering from dementia. However, as I have pointed out above, the sources of her comments in this regard are somewhat dated. I cannot find based on Dr Holden's report that any stigma is of such consequence for the Second Appellant that it would impact on her ability to participate in society in Pakistan.
70. Of course, the Second Appellant's condition itself and her associated mobility problems do limit her participation in society whether in the UK or Pakistan. It is not however a very significant obstacle to integration in Pakistan in and of itself.
71. Having considered the factors which may be said to impact on the Appellants' ability to integrate on return to Pakistan, I find that, although it may be difficult for them initially to reacclimatise, for example to find accommodation and rebuild relationships with family members and friends there, the obstacles which they would face cannot be described as very significant.
72. For those reasons, the Appellants do not satisfy Paragraph 276ADE (1) (vi).
73. I move on then to consider Article 8 outside the Rules. As I have already noted, although the Appellants are unable to meet the ADR Rules, it is instructive to consider the extent to which they might have been able to do so if they were making this application from outside the UK and therefore satisfied the status requirement.
74. The first consideration is whether they require "long-term personal care to perform everyday tasks". Although the First Appellant's mobility is said to have deteriorated, the Appellants' sons do not suggest that he requires assistance with his own personal care. Fawad Qamar's evidence is that the First Appellant sometimes needs help when he has problems with his back pain but when that is better "he does it all be himself". He is able to do light physical exercise albeit only for short periods.
75. The situation is however different for the Second Appellant. She has limited mobility and is confined to a wheelchair if she goes out so that she is unable to go out unaided. Although the evidence is that she is still able to carry out intimate personal care for herself with some functional assistance, she is unable to carry out household tasks like cooking and shopping. The reason why the First Appellant cannot assist in the latter regard is cultural only as he has no idea how to do these things. However, I accept the evidence that he would be unable to care for the Second Appellant unaided as his own mobility prevents him for example pushing her wheelchair. I

accept therefore that, if I were looking at the case through the lens of the ADR Rules, the Second Appellant's situation would meet the first criteria.

76. The second criteria however concerns the availability of care in Pakistan. The Appellants would have to show within the ADR Rules that they would be "unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they [would be] living". As was explained in Britcits, this turns on what is necessary and reasonable.
77. I begin my consideration of this aspect with the report of Dr Holden. I accept her expertise. I also accept her starting point that in the culture of Pakistan, it is expected that children will look after their elderly parents. Indeed, this is clear from the evidence I received from the Appellants' sons. They would not wish to see their parents in a care home whether in the UK or Pakistan.
78. I accept Dr Holden's evidence that, due to the cultural expectations in Pakistan, there is less State provision for the elderly in Pakistan than in the UK. Even in the UK, it might be said that State provision is not perfect. However, I accept Dr Holden's evidence that there are limited care facilities available. On the other hand, she does not say that there are not any. She has provided information about some medical outpatient care facilities and some accommodation provision. She identifies one such home in Lahore specifically for those with dementia. Lahore is of course the home area of the Appellants and their family. The rates charged by that home compare very favourably with what would be charged in the UK. The evidence given by the Appellants' sons is in any event that they are financially secure and would pay whatever was needed for their mother's care. As Dr Holden says at [29] of her report, "the effectiveness of the home care service depends on the financial resources of the Appellant".
79. It is perhaps in relation to affordability that I can give Dr Holden's report less weight as she appears to be labouring under the impression that the Appellants would fall within the low to medium income bracket in Pakistan. That may well be so based on their own earnings which come only from the First Appellant's pension. However, that does not take into account the financial support which the Appellants' sons do and would continue to provide. So, when it comes to domestic help, for example, the Appellants would be able to afford that.
80. Similarly, and although not directly relevant to care, there ought to be no need for the Appellants to enter sheltered accommodation for the elderly if they can pay for domestic care. Their sons could rent a property for them. Although I do not have evidence from the Second Appellant's sister supporting the assertion that she would not allow the Appellants to live in her property in Makkah Colony, it appears from Dr Holden's report that this is not an ideal location for the Appellants to live in any event. There is however no reason why the Appellants' sons could not fund a rental property. It may be the case that they could even buy the Appellants a family home.

81. In terms of medical treatment, the Appellants are prescribed various medications. I was not told that any of these are not available in Pakistan. Many of the Appellants' medical conditions pre-date their arrival in the UK and they must therefore have been in receipt of those medications in Pakistan. Dr Holden says, by way of a criticism, that prescription medicines in Pakistan are freely available and unregulated but, conversely, that suggests that there is no difficulty in obtaining medication which is required. In any event, as I understand the medical evidence, particularly that of Dr Roche who made the initial diagnosis of vascular dementia, medication is unlikely to assist in this regard (although I understand that the Appellants both need medication for other more long-standing conditions which I assume therefore that they could obtain in Pakistan).
82. I do not place any weight on what Dr Holden says about availability of mental health services in Pakistan for two reasons. First, and fundamentally, there is no evidence that the Second Appellant has been referred for specialist treatment of mental health problems in the UK (other than in relation to her dementia which has been reviewed intermittently including on previous visits to the UK). Second, and in any event, Dr Holden again appears to assume that the Appellants would not be able to afford to pay privately if the Second Appellant did need such care. As such, her comments about the problems inherent in the public health system are not relevant.
83. I accept that the Appellants' sons and probably the Appellants themselves would be reluctant to turn to care homes to provide the necessary care for the Second Appellant. Whilst that might be culturally unsatisfactory, I do not find that it is unreasonable. In any event, the Appellants could turn to live-in domestic care to assist them.
84. The above is somewhat hypothetical in any event since the Appellants' sons made very clear that it would be their intention for one of the families to return to Pakistan with the Appellants were they to be returned. As such, the support and care which the Second Appellant receives from her family in the UK would be effectively replicated. I come to the proportionality and reasonableness of that course below. However, in light of the evidence before me, I am unable to accept that there is not care available to the Appellants (particularly the Second Appellant) to assist with their care needs in Pakistan.
85. If I were considering this case within the ADR Rules, therefore, the Appellants would fail. I accept that this is not the way in which the case has been argued. Mr Jones did not make any submission that the Appellants would inevitably meet the ADR Rules if they were applying from outside the UK. The Appellants' case is rather that, balancing the impact of removal on family and private life against the public interest, removal would be disproportionate. I turn therefore to consider that case.
86. I accept that the Appellants enjoy family life with their children and their children's families in the UK. They live with two of their sons and their families. They clearly have a financial and physical dependence on their sons and daughter-in-laws. They have a close relationship with their grandchildren. Notwithstanding that their

children are adults therefore I accept that the relationship is one of family life. That is important since I must consider the impact of removal not only on the Appellants but also on their family.

87. Before I turn to consider that impact, it is appropriate to say something about the Appellants' private lives. The focus of the submissions made to me is, for understandable reasons, the family life which they enjoy. However, I do not find that there is any significant interference with the Appellants' private lives save as regards their medical care. There is no evidence that they have integrated in the UK. They do not speak English. They have been largely housebound since arriving in the UK on the last occasion due to the pandemic but there is no evidence that their social circle is any wider than their sons and their sons' families. Section 117B (5) requires me to give little weight to a private life formed whilst in the UK on a precarious basis as is the case here. Whilst the weight to be given is variable, in this case I do give the interference with the Appellants' private lives in terms of their social relationships and integration little weight due to the lack of evidence about those private lives.
88. The main focus in relation to their private lives is the interference with the care which they receive and the impact of removal on their medical conditions.
89. It is not suggested that the impact of removal on the Appellants' health would breach Article 3 ECHR nor could it be on the evidence for the reasons I have already explained when looking at the availability of care in the context of obstacles to integration and the ADR Rules.
90. I accept, however, that the impact is also relevant to the Article 8 balance whether that is by reference to the effect on private lives or family life if there is some other element of Article 8 which applies. I have already made the point that there is no evidence of the Appellants' integration in the UK or relationships which they have formed here which fall within the paradigm of private life.
91. The position is however different in relation to family life. I accept that there is evidence that the Appellants have a close and strong relationship with both their adult children and the wives and children of those children. That is a reciprocal relationship reinforced by the care which the Appellants' family give.
92. Although I have limited information about the children of the Appellants' sons, there was no challenge to the evidence that those minor children are very close to their grandparents who, no doubt, so far as their medical conditions permit, look after those children. I am of course bound to treat the best interests of those minor children as a primary although not a paramount consideration. In this case, however, despite what I say about the closeness of the relationship, there is limited if any evidence about the impact which removal would have on those children. I would expect them to be upset if their grandparents were to return to Pakistan but, ultimately, the children are either of an age where they depend entirely on their parents who would still be here to care for them or where they are forming their own

friendships outside the family unit which they would be able to continue. I can therefore give little weight to the best interests of the children.

93. I have already mentioned several times the evidence of the Appellants' sons that if the Appellants were removed, one of them would move to Pakistan to look after the Appellants. I am unable to consider the impact of that option however in the absence of evidence about which of the sons would go and what that would mean for their family. All three sons have their own minor children and therefore some of those children would be impacted if their parents were to return to Pakistan. There is however some difference between, for example, Fahim Ali and his wife and children relocating and Syed Ali doing so. Fahim has two very young children. The youngest might be a British citizen depending on Fahim's status when that child was born but both are young enough to become accustomed to Pakistan. Fahim said that he had returned to Pakistan with his wife (and presumably his eldest child) for two months in 2019. His wife's parents live in Pakistan. I accept that Fahim has been in the UK since 2007 and has a successful business in the UK but I have no information why he could not continue to participate in that business from abroad.
94. By contrast, Syed Ali has older children who have lived in the UK for most of their lives or were born here. They are I assume British. Two at least are in formal education and have been for many years. Clearly, the uprooting of those children would have a greater impact than would be the case for two very young children not yet in education.
95. However, I find that I do not need to consider this option within Article 8 as, if one of the Appellants' sons did decide to go with the Appellants, that would be as a matter of choice (albeit an enforced one) and not directly as a result of the removal of the Appellants.
96. I therefore consider the impact of removal on the basis that this would lead to the separation of the Appellants from their family members. I accept that this would be very upsetting for all concerned. I accept Mr Horrocks' evidence about the impact on the Appellants' emotional well-being although, as I have said, there may be less impact on their care needs than he envisages due to the availability of care facilities in Pakistan. I have also accepted that there might be some initial obstacles at least to be faced in Pakistan and of course, if one of the Appellants' sons did not go with the Appellants, they would have to find a carer for the Second Appellant.
97. I do not propose to repeat what I have already said about the impact of removal on the Appellants' medical conditions. I accept that there may well be some impact but that can be mitigated by finding appropriate care if one of the Appellants' sons and family did not relocate. As Ms Cunha pointed out, one of the sons might not need to relocate permanently but merely in the short-term in order to settle the Appellants back in Pakistan, find accommodation and appropriate care. Thereafter, family life could be continued by regular visits of the Appellants' sons and their families to their parents. I accept that the impact would be harsh for all concerned but the issue for

me is whether that harshness is justified when balanced against the public interest in removal.

98. I therefore turn to consider the public interest. It was suggested to me by Mr Jones that there is, in reality, no public interest in the removal of the Appellants. They made their application to remain in time whilst they still had leave to be in the UK as visitors. Unlike in the case of Mobeen to which I have made reference, the Appellants are not overstayers. However, that is by reason of having made their application within time and having appealed the refusal of leave. They had leave to remain only for a period of six months and were expected to return to Pakistan at the end of that period. I do not doubt the evidence that this was their intention when they came to the UK and were persuaded by their sons to make the application to remain because of the Second Appellant's deteriorating condition.
99. Nonetheless, the fact remains that the Appellants have no basis to remain within the Rules. For reasons I have already given, if this were an application under the ADR Rules, I would have concluded that they could not satisfy the Rules. There is a public interest in not allowing those who have no basis of stay within the Rules to remain in the UK. Those Rules are intended to ensure fairness in immigration and are part of an effective immigration control system the maintenance of which is in the public interest.
100. That brings me on to the public interest in the ADR Rules themselves. I accept the evidence that the Appellants' sons have and would continue to pay for the Appellants' medical treatment privately. They are able to accommodate and maintain the Appellants. The Respondent does not take issue with that evidence.
101. However, as was said in Britcits, there is a further public interest inherent in the ADR Rules concerned with consistency as between applicants. As the Court of Appeal put it in Britcits, the ADR Rules are "intended to avoid disparity between ADRs depending on their wealth" so that only those who can show a real need to access care in the UK are permitted to stay. In this case, I have found that is not the position. The Appellants can receive care in Pakistan. The public interest in preserving a consistent position as between applicants is, I find, a strong one.
102. I therefore have to balance what I accept is a harsh impact on the Appellants and their families against what I consider to be a strong public interest in their removal. Ultimately, the question is whether the impact is "unjustifiably harsh". That says no more than whether the decision to remove is disproportionate when interference is balanced against public interest.
103. Although I accept that the balance is quite a fine one, I have reached the conclusion that the consequence of the Appellants' removal is not unjustifiably harsh. I add that I have every sympathy for the position in which the Appellants and their family find themselves. Whilst it might reasonably have been expected that the situation in which they now find themselves would come to pass as the Appellants grew older and their family migrated out of Pakistan, I accept that they did not orchestrate the

current situation. However, I have to apply the law to the facts and evidence. Based on the legal position and even accepting the evidence which the Appellants have put forward, I am unable to conclude that removal would in this case be disproportionate.

CONCLUSION

104. The decision to refuse the Appellants' human rights claim is not contrary to section 6 of the Human Rights Act 1998. Removal would not breach the Appellants' human rights. I therefore dismiss the appeals.

DECISION

I dismiss the appeals.

Signed *L K Smith*
Upper Tribunal Judge Smith

Dated: 21 July 2021

APPENDIX: ERROR OF LAW DECISION



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04694/2019 (V)
HU/04697/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business
On Monday 3 August 2020

Determination Promulgated
...3 September 2020.....

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MR QAMAR ALI
MRS ANIS QAMAR

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Lay, Counsel instructed on a direct access basis
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND

1. The Appellants appeal against the decision of the First-tier Tribunal Judge I Ross promulgated on 29 November 2019 ("the Decision"). By the Decision, the Judge

dismissed the Appellants' appeals against the Respondent's decision dated 28 February 2019 refusing their human rights claims, made in the context of an application to remain in the UK with their adult children and the families of those children who are settled in the UK. The Appellants are currently aged seventy-five and seventy-one years respectively. They pray in aid of their application their ill health and their relationships with their children and grandchildren.

2. The Judge considered the Appellants' cases first within the Immigration Rules ("the Rules") in particular those which permit the entry to the UK of adult dependent relatives. It is not disputed that the Appellants cannot meet those Rules not least because they are making their application from within the UK and not from abroad. The Judge did not accept either that the Appellants can meet the Rules relating to their private lives. He did not accept that there are very significant obstacles to the Appellants' integration in Pakistan (under paragraph 276ADE(1)(vi) of the Rules). The Appellants entered the UK last in July 2018 as visitors. Finally, outside the Rules, whilst the Judge accepted that there is family life between the Appellants and their adult children (and possibly also with their minor grandchildren), he concluded that the decision to remove the Appellants was proportionate.
3. The Appellants appeal on three grounds as follows:
Ground 1: Adequacy of reasons and failure to consider material issues and evidence.
Ground 2: As a result, the Judge's finding as to very significant obstacles is flawed.
Ground 3: As a result, the Judge's finding that it is not unjustifiably harsh for the Appellants to return to Pakistan is also flawed.
4. Permission to appeal was granted by First-tier Tribunal Judge Fisher on 24 April 2020 as follows (so far as relevant):
"... 2.The grounds seeking permission assert that the Judge erred in failing to make adequate findings on the evidence. Specifically, it is said that he failed to make findings on the availability of family in Pakistan to support the elderly Appellants on return, on the first Appellant's ability to care for his wife in that event and on the potential impact on the sponsor and his family having to relocate to Pakistan to care for the Appellants. It is further said that he failed to consider the best interests of the children, and that he failed to mention the background evidence on healthcare or the independent social worker's report. The grounds go on to challenge the Judge's findings on very significant obstacles under Paragraph 276ADE and on Article 8 issues outside the Rules.
3. It is arguable that the Judge has erred in failing to make findings on relevant issues in the appeal. His failure to mention the best interests of the children in assessing proportionality, or to deal specifically with the expert report and the background evidence, are also arguable errors which infect his findings on Paragraph 276ADE as well as Article 8 outside the Rules.
4. Consequently, I grant permission to appeal. All grounds are arguable."

5. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.
6. Notice of the hearing before me was sent to the parties on 16 July 2020 indicating that the hearing would be conducted remotely via Skype for Business given the current restrictions caused by the Covid-19 pandemic. Neither party objected to that course.
7. An application to adjourn the hearing due to the unavailability of Counsel who has represented the Appellants to date (Mr Jones) was refused by the Tribunal lawyer and by me following a review. Fortunately, the Appellants were able to find alternative Counsel. I am grateful to Mr Lay for taking on the appeals at short notice and for his very helpful submissions and skeleton argument.
8. Other than a very minor technical issue at the outset of the hearing, which was swiftly resolved, there were no other technical issues with the remote hearing and both parties confirmed that they were able to follow the hearing throughout. I had before me Mr Lay's skeleton argument, as well as Mr Jones' skeleton argument from the First-tier Tribunal hearing, a bundle and supplementary bundle filed by the Appellants in the First-tier Tribunal as well as a few sundry documents and the Respondent's bundle. I do not need to refer to the substance of those documents in what follows but I have read them.

DISCUSSION AND CONCLUSIONS

9. Mr Lay focussed his submissions on what he said were the starkest errors, namely the failure to deal with the children's best interests or the social worker's report. That latter is a report of Mr Peter Horrocks which is at [ABS/1-24]. In this case, that report deals not only with the children affected by the appeals (namely the Appellants' grandchildren) but also the social care aspects of the cases, in particular that of the Second Appellant who suffers from dementia (amongst other conditions) and the ability of the First Appellant to care for her.
10. Those failures form part of the Appellants' ground one and have implications in relation to ground three (in relation to the children's best interests) and ground two (in relation to the obstacles which the Appellants would face on return to Pakistan if forcibly removed based on what is said in Mr Horrocks' report).
11. Taking first the children's best interests, Mr Lay submitted that the Judge's approach is muddled. He drew my attention to [28] and [29] of the Decision which read as follows:

"28. Whilst I am satisfied that there is family life between the appellants and their adult children in the UK, the question is whether the refusals are proportionate. The appellants came to the UK as visitors with six-month visit visas. They and their family chose not to apply from Pakistan for entry clearance as adult dependent relatives.

29. I have had regard to the section 117B factors. There was no evidence that the appellants can speak English, although I accept that they are financially independent. Little weight can be afforded to their private lives given that their immigration status has always been precarious. Their family life together as a couple can continue in Pakistan and their relationship with their children and grandchildren can continue uninterrupted, given that they are used to travelling between Pakistan, Dubai and the United Kingdom.”

12. The Judge there accepts that family life exists between the Appellants and their adult children (having regard to what is said in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31). However, the Judge does not state whether it is accepted that there exists family life between the Appellants and their grandchildren. Perhaps as a result, the Judge has failed to make any finding as to the children’s best interests (as Ms Cunha accepted).
13. As regards Mr Horrocks’ report, Mr Lay accepted that the Judge could give less weight to that report or find that it was not consistent with the other medical evidence if that was his view. However, as Ms Cunha again accepted, there is no reference at all to the report.
14. Ms Cunha’s response to those submissions is that there are errors, but they are not material.
15. Dealing first with Mr Horrocks’ report, Ms Cunha pointed out that, at [21] of the Decision, the Judge has set out the medical evidence which forms a large part of the obstacles which are said to exist on return to Pakistan. The issue before the Judge was whether the medical conditions amounted to very significant obstacles to integration in Pakistan. The Judge deals with that submission at [26] of the Decision, having recorded the content of the medical evidence at [18] to [21] of the Decision and set out his findings about the medical conditions at [23] as follows:

“18. The medical evidence in relation to the second appellant (mother) is contained in a letter from The Harrow Health Care Centre dated 1 November 2019. It confirms that she has been attending there since October 2015 and has been seen on approximately 20 occasions. She has Type II diabetes – long – standing; hypertension – long- standing; cognitive impairment onset June 2016. The effect of the cognitive impairment is memory dysfunction, which is increasing, and she has been treated with drugs used for Alzheimer’s. Her mood is good, she is compliant but requires supervision within the home and is increasingly reluctant to leave the house or to go walking, which is now having an impact on her mobility and activity. She has six monthly reviews and her blood tests are generally very satisfactory.

19. The doctor has stated that the second appellant needs constant supervision in order to remain safe. She is always brought by her son and would be unable to negotiate her way through obtaining the appropriate medical care. She is now walking quite slowly due to increasing immobility. She needs her meals provided and help and support his daily tasks. When going out she now requires a wheelchair as she is unable to walk more than 500m without becoming fatigued. She has a medical condition which will continue to decline, and she

will require increasing levels of supervision with daily tasks such as eating, dressing, washing-all of which are currently being provided by her supportive family. She needs one-to-one supervision should she be required to travel by air.

20. Another letter from Dr Roche dated 30 January 2019 states that the second appellant's main issues are with their short-term memory names and repetition. She can be irritable at times, but there is no evidence of underlying depressive disorder. He suspects that she has got vascular dementia and that medication may not help.

21. In relation to the first appellant (father) there is also a letter from The Harrow Health Care Centre dated 1 November 2019. His current medical conditions are sciatica which has improved with time, rest and anti-inflammatories. He has had emphysema and bronchiectasis some considerable time. He gave a history of having significant breathing difficulties whilst being in Pakistan which is attributed to impure air quality. He has had a variety of inhalers prescribed for him and has had 3 consultations here in respect of his breathing issues. He has significant restriction on lung function, which makes him short of breath on exertion, although not at rest and makes him susceptible to recurrent chest infection. He is a lifelong non-smoker and his emphysema thus must have been caused by other toxic air components and his bronchiectasis will make him susceptible to recurrent infection in addition. He will require long-term use of inhalers and rescue antibiotics as required. His respiratory function is significantly compromised by factors such as cold weather. Poor air quality will provoke episodes of breathing disorders comparable to asthma. This is an irreversible condition and likely to deteriorate with age. It is likely from his history, that his lung condition will be further adversely affected should he return to Pakistan. His other health is excellent, his mental function is good he is active and fit in other respects. His lung function however is significantly impaired which would make it hard to provide the physical support required by his wife. In the doctor's opinion, both appellants would suffer significant deterioration in their health should they be required to live alone together in Pakistan. They both need support and help of their family as they both have long-term irreversible medical conditions.

...

23. Whilst the medical evidence in relation to the second appellant is that she will require increasing levels of supervision, the specified evidence required under Appendix FM 34 is absent. I am not satisfied that either appellant cannot perform everyday tasks. Further, there is no independent evidence that the appellants are unable, even with the practical and financial help of the sponsor in the UK to obtain the required level of care in Pakistan. Such evidence should be from (a) a central local health authority; (b) a local authority; or (c) a doctor or other health professional. The appellants are also required to show why any private arrangements for their care are no longer available.

...

26. I find that it has not been shown that there are very significant obstacles to the appellant's integration in Pakistan. They are nationals of that country and have lived there all of their long lives, notwithstanding that they are able to travel abroad to Dubai and the UK for parts of the year. Whilst the levels of pollution may be high in the part Pakistan where the appellants come from (there

is no independent objective evidence in relation to that), I do not accept that living in Pakistan of itself is detrimental or damaging to the appellants' health. The appellants, with the help of their family members can choose where in Pakistan to live, which could include areas with much cleaner air and less pollution."

16. Ms Cunha drew my attention to the Court of Appeal's judgment in the case of Lal v Secretary of State for the Home Department [2019] EWCA Civ 1925 regarding the need to look at the position throughout Pakistan. I accept that the Judge was entitled to consider that particular aspect in the way he did.
17. The difficulty with the Judge's findings in this regard though is the failure to consider the care which the Second Appellant, in particular, may need on return to Pakistan through the lens of whether there are very significant obstacles to integration. His findings are made in the context of whether the adult dependent provisions of the Rules are met. The findings there made (leading to the conclusion that the Rules in that regard are not met at [24] of the Decision) do not seem to have found their way into what follows at [26] of the Decision.
18. The Judge's finding that the Appellants could continue to travel between Pakistan and their children's homes as they do now, also ignores the medical evidence that the Second Appellant's condition is deteriorating. As Mr Lay submitted, it also ignores the evidence of the care which the Second Appellant will need and how that care can be provided in Pakistan and in the UK.
19. For those reasons, the failure to consider Mr Horrocks' report is material. What is said in that report could impact on the findings about what will occur on return to Pakistan and, in turn, on the level of obstacles which the Appellants will face there. In any event, there is an error in the Judge's findings about very significant obstacles which ignore much of what is said about the medical conditions of the Appellants and their ability to cope in Pakistan.
20. In relation to the proportionality assessment, Ms Cunha submitted that the Judge was entitled to take into account that the Appellants do not meet the Rules as adult dependents (although Mr Lay pointed out in reply that the Appellants had never sought to say that they did). It is of course relevant that the Judge has made an error of law when reaching his finding as to very significant obstacles which might impact also on this aspect of the proportionality assessment.
21. Ms Cunha accepted that it was implicit in the Judge's finding at [28] of the Decision that he accepted that family life exists between the Appellants and their grandchildren. She also accepted therefore that consideration of the impact in Article 8 terms on those children (including consideration of their best interests) is also missing. Her point was that this is not material because the Appellants are not dependent on the minor children.
22. I accept that the way in which the Judge has considered this issue (in terms of dependency of the Appellants on family members) is not impacted by any failure to

take into account the minor children's best interests. However, the Judge has left out of account the impact on those children (as opposed to on their grandparents), in particular those children with whom the Appellants currently live. The Judge has failed to consider the impact on them of their grandparents leaving the UK.

23. The failure is particularly stark when one considers the final sentence of [29] of the Decision where the Judge finds that the relationship can continue as it does now by the Appellants continuing to travel between Pakistan and the UK. I repeat the point made above that this ignores the evidence about the deterioration in the Second Appellant's condition and whether therefore the Appellants would be in a position to travel as they did before. There is no consideration whether the continuation of the relationship at distance would impact on the children's best interests. There is no consideration either of Mr Horrocks' report in this regard.
24. I accept Mr Lay's submission that the issue of materiality is not whether the outcome would definitely be different but whether it could be. For the reasons I have given, I accept that the errors of law identified (and accepted as failures by the Respondent) have the potential to impact on the outcome. I therefore accept that the errors are material.
25. It follows from the foregoing that I am satisfied that the Decision should be set aside on the basis that it contains an error of law. The failures to consider certain evidence and issues impacts on the Judge's findings both within the Rules (concerning paragraph 276ADE(1)(vi) and outside the Rules). For that reason, it is appropriate to set the Decision aside as a whole with no findings preserved. The appeal will need to be re-heard on all issues.

NEXT STEPS

26. Both parties were content that, if I found the errors to be material, I should direct that the appeals be re-heard in this Tribunal. Although there need to be entirely fresh findings of fact, there are no credibility issues as such, and the findings needed are largely an assessment based on documentary and oral evidence.
27. As to directions, although there has been no application to adduce further evidence by the Appellants, I am satisfied that it is appropriate to make a direction to allow for further evidence, particularly since the medical evidence may need to be updated. Mr Lay asked that I take into account the possible difficulty in obtaining medical evidence quickly at the present time and asked that the Appellants be given until at least 1 October to file further evidence.
28. In relation to a resumed hearing, the First Appellant and one of his sons gave evidence previously. Mr Lay was unsure whether that would be the position in a further hearing and whether the First Appellant would need to give evidence via an interpreter. I pointed out the difficulties in taking evidence via an interpreter remotely and that, if the First Appellant does wish to give evidence and needs an interpreter there might need to be a face to face hearing. Due to his age, consideration would need to be given to the desirability of that course.

29. I have given directions below to permit submissions as to the identity of witnesses, whether an interpreter will be required and whether the hearing should be remote or face to face. I have also given a direction to allow for further time to produce updated evidence and for a hearing not to take place until after the deadline for such evidence.

CONCLUSION

30. For the above reasons, I am satisfied that the grounds disclose errors of law in the Decision. I therefore set aside the Decision. I give directions below for a resumed hearing in this Tribunal.

DECISION

I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge I Ross promulgated on 29 November 2019 is set aside. I give directions for a resumed hearing below.

DIRECTIONS

1. Within 14 days from the date when this decision is promulgated, the Appellants shall file with the Tribunal and serve on the Respondent written submissions identifying the witnesses who are to be called to give evidence, indicating whether any of those witnesses require an interpreter and setting out the Appellants' position as to the way in which that hearing should be conducted (via remote means or face-to-face). The Appellants shall also include joining details for Skype for Business and a contact telephone number for those who it is intended should attend the resumed hearing to permit the resumed hearing to be listed remotely should that be the Tribunal's decision.
2. Within 14 days from the service of the submissions in (1) above, the Respondent is to provide written submissions in response indicating whether she wishes to cross-examine any other of the witnesses and whether she agrees to the forum suggested for the re-hearing. She should also provide joining details for Skype for Business and a contact telephone number for those persons who it is intended will attend the resumed hearing.
3. The Tribunal will then give notice as to the form of the re-hearing. The re-hearing will not be listed until after 30 October 2020.
4. Within two months from the date when this decision is sent, the Appellants are to file with the Tribunal and serve on the Respondent any further evidence on which they wish to rely.

5. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents which should continue to be sent by post.
6. Service on the Secretary of State may be to [email] and on the Appellants, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.
7. The parties have liberty to apply to the Tribunal for further directions or variation of the above directions, giving reasons if they face significant difficulties in complying.

Signed *L K Smith*
Upper Tribunal Judge Smith

Dated: 5 August 2020