Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06328/2019

THE IMMIGRATION ACTS

Heard at Field House Via Skype for Business	**Decision & Reasons Promulgated**
On 5 February 2021	**On 22 March 2021**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

FEHMIDA BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Briddock, instructed by Rahman & Company Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, together with her husband Muhammad Zahoor Butt appealed against a decision of the Secretary of State of 4 March 2019 refusing their applications for entry clearance to join their son as adult dependent relatives in the United Kingdom.

2. Sadly, after the hearing before the judge Mr Butt died and consequently the appeal is pursued by the appellant (as I should hereafter refer to Mrs Begum) alone.

3. The appellant is a national of Pakistan born on 1 January 1953. The essence of her case, as set out by the judge at paragraph 4 of her decision, was that she and her husband were unable even with the practical and financial help of the sponsor to obtain the required level of care in Pakistan because it is not available and/or there is no person reasonably able to provide that care there or it is not affordable. Hence it was specifically argued that the requirements of paragraph E-ECDR.2.5 of HC 395 were met.

4. The judge set out the relevant provisions of Appendix FM, including paragraph E-ECDR.2.5 and also relevant case law, including Ribeli [2018] EWCA Civ 611.

5. An issue before the judge was whether the appellants (as they were before her) were the sponsor's parents. She found that they were, and there is no challenge to that finding. As a consequence she found that the requirements of paragraph E-ECDR.2.1 were met. She also found that the requirements of paragraph E-ECDR.2.4 were met in that the appellants required long-term care due to illness and age. There was evidence that the appellant had experienced a recent car accident and also had mental health issues including schizophrenia.

6. In her findings the judge noted that the appellants said that they were able to access medical care but their day-to-day care was provided for by their sister-in-law who was due to move to Spain to join her husband and children. The appellant was not mobile and required assistance with personal hygiene and her depression was due to the lack of family in Pakistan. Her son's evidence before the judge was that his mother's illness began when her sister moved to the United Kingdom, as one of his sister's twins had lived with his mother since birth.

7. Reliance was placed on a letter by Mudassar Iqbal confirming that there were no care homes in the appellants' local or neighbouring areas. As a consequence he said the appellants would have to move to a large city to access a care home and this would not be reasonable from their perspective. They relied on Mr Iqbal's statement where he said they would be easily coerced and abused in a care home. Also as there were no checks on care they would be open to abuse in their own home with a personal carer. He said that family closeness was crucial to the appellants' recovery and therefore the only appropriate people to meet the daily needs of the couple were their family.

8. The judge found that Mr Iqbal, who listed his qualifications as school health and nutrition supervisor, was not able to comment on issues such as the impact on the appellants if they were required to move from their village

to obtain care or how any such condition might deteriorate without the physical presence of their family members. She placed little to no weight on his conclusions. The letter did not comply with paragraph 10 of the Practice Direction.

9. She noted evidence of the appellants' sons that they had made checks on the internet and through a network of friends and/or local health officials in relation to care facilities in Pakistan. They had not been able to produce evidence of searches. One son said he did not have them with him and the other son said his phone had been reset and so the information might be on there but was not available at the date of the hearing. They stated their mother was having to travel to Jhelum from her village for her medical condition and to see doctors and even that was 45 minutes to an hour away. The respondent argued that inquiries should have been made further afield than Jhelum. The judge found that minimal inquiries had been made by the appellants' sons in relation to care facilities. She noted that they were both of the view that only they were able to provide care for the appellants and she found that had they made the inquiries they stated they did, they would have been able to provide evidence of those searches today.

10. The judge also considered a report of Uzma Moeen, an academic in law and former senior lecturer in Pakistani law. She said in her report that she was not a medical practitioner but a country expert with direct knowledge and practical experience of living in Pakistan. She said she was able to comment factually on the matter as an experienced academic and lawyer and due to her professional career as head of an educational establishment in Lahore, her court practice and personal experience. The judge noted that reports she had provided to the Home Office and courts were reports in relation to risk of harm or persecution and family/religious values in Pakistan and the judge was not aware of which particular personal experiences made Ms Moeen able to comment on the availability of care facilities for the appellants.

11. She noted that Ms Moeen commented on the issue of lone elderly couples and stated at paragraph 12 of her report that not much was written about paid care facilities in Pakistan. She spoke of the appellants as having no supportive familial network in Pakistan. The judge noted that she had been told by the appellants and their children that they were being looked after by Mrs Kausar her sister-in-law who was yet to leave to Spain to join her spouse and that the appellant had a sister, albeit one who looks after her own family in the same village where the appellants lived. Her report spoke of the social stigma of care homes. Ms Moeen agreed, at paragraph 17 of her report, that some care facilities were available in Islamabad and Karachi. She came to conclusions in the report about their suitability and the training deficiency of private care providers in dealing with special healthcare issues, based on material from 2010.

12. Ms Moeen acknowledged that there were a few tertiary care hospitals in big cities for couples such as the appellants. She spoke of homes in Karachi, Rawalpindi, Islamabad and Lahore. She said that: “you do not need much of an imagination to foresee the misery of those left on their own in such institutions”, and the judge noted that that was not based on any actual knowledge or evidence but on inference alone. She found that she could not rely on this conclusion as it was not supported by the witness’s CV or anything she had identified within her personal knowledge. She found that the report fell foul of the requirements of paragraph 10.4 and 10.5 of the 2018 Practice Direction. She found that the conclusions and manner of writing the report were presented as if Ms Moeen was advocating on behalf of the appellants and was unclear at times about how the matters she concluded on were within her area of expertise. The judge went on to note that at paragraphs 19 to 20 Ms Moeen came to conclusions about the adequacy of care without any reference to how she was in possession of this knowledge to qualify these conclusions. Ms Moeen had said that the cost of care for the appellants could be met by their sons. There was nothing in her CV which indicated that Ms Moeen had a specialist knowledge of care home facilities, private care resources or a consideration of whether there were facilities that, notwithstanding a lack of Regulation, provided adequate care for the appellants’ needs. She had stated that she was a country expert, but the judge found that there was nothing to indicate that she had any personal knowledge of care home or care provision to allow her to put herself forward as a country expert in these matters that were expanded on in the report.

13. Ms Moeen had gone on in her report to assess the criminality to which the appellants might be subject. The judge noted that she had not been told of any incidents that had occurred or had been feared by the appellants since their children began living abroad. At paragraph 34 Ms Moeen spoke of the appellants as if they were already in the United Kingdom which was not the case. At paragraph 35 she said that without their children they could not perform daily matters, yet their last child left for the United Kingdom in 2015. Ms Moeen also mentioned a Global Age Watch Index Report of October 2013 which stated that just because the elderly resided with their parents it did not mean that their needs were met and that the state did not provide an adequate infrastructure for care of elderly relatives. The judge noted the date of the report and that this was a case where Ms Moeen had expressly stated the sponsor would be able to pay for care in Pakistan.

14. The judge went on to note that Ms Moeen mentioned state hospitals that would be able to care for the appellants’ mental health needs and that the appellant might not be able to access medical treatment, in reliance on articles from 2004, 2006 and 2014. The judge found that she had researched source material that was not recent to come to her conclusions and with little objective consideration of matters which might detract from her opinions as required by the Practice Direction. In light of the judge’s findings she concluded that she was able to place little weight on the

conclusions about the inadequacy of care facilities for people such as the appellants in her report.

15. The judge then went on to consider a report of Dr Halari which she was asked to rely on to find that the appellant would not have her needs met by a care home or carer in Pakistan. The judge noted that the contents of the report referred on a number of occasions the conversations with both of the appellants' sons. She noted the information given by the appellants' sons to Dr Halari and the fact that the respondent took issue with the report and the amount of contributions that the appellants' sons had had to its conclusions.

16. In evidence before the judge, one of the appellants' sons said that their mother did 50% of the talking in her 40 minutes to an hour appointment and the other son said his mother spoke to the doctor for five to ten minutes, he spoke for ten to fifteen minutes, his brother spoke for five to ten minutes and their mother also spoke for five to ten minutes.

17. The judge concluded that Dr Halari had not commented on matters within her own expertise when commenting on the ability of the appellant to remain in a care home in Pakistan. There was nothing in her CV which indicated she had any expert knowledge of the facilities available in Pakistan where care could be provided for the appellants' day-to-day needs. She noted the considerable time, as she put it, that Dr Halari spent speaking to the appellants' sons as evidenced by them and as recorded in her report. She noted the views expressed by the sons about the provision of care in Pakistan but did not see how Dr Halari had come to her own conclusions in relation to those matters. As a consequence she rejected Dr Halari's conclusions about the ability of the appellant to live in a care home or to be cared for in Pakistan. She accepted Dr Halari's diagnosis that the appellant was suffering from moderate depression. She noted also that the sister-in-law who was currently looking after the appellants was yet to leave Pakistan, despite having made her application in February 2019.

18. The judge went on to conclude, at paragraph 38 of her decision, that in light of her findings above she found that the appellants had not demonstrated that they met the requirements of E-ECDR.2.5. She accepted that they suffered from the medical conditions they had described, but found that it had not been demonstrated that adequate care could not be provided in Pakistan, with the practical and financial support of the sponsor and their family. She noted that the sponsor was able to fund any day-to-day care that they required. She said that in line with Ribeli no reliable evidence had been provided by the appellants to demonstrate that there were inadequate carers or care homes in the vicinity of their home or in Pakistan which would meet their day-to-day needs, in light of her findings. No evidence had been provided to her about the research undertaken by the sponsors who said they researched in the locality for facilities within a reasonable distance.

19. At paragraph 39 the judge went on to observe that Ms Moeen's report showed that medical facilities for both physical and mental health difficulties for the appellant's case for her moderate depression, were available in larger cities in Pakistan. The appellants were presently and for the foreseeable future being cared for by Mrs Kausar with no evidence before the Tribunal in relation to when she was due to leave for Spain. The appellant also had her sister in the same village and her family in the United Kingdom were able to visit and support her as they had done. She noted paragraph 70 of Ribeli and the choice made by the appellants' family to leave Pakistan, knowing that the appellants had medical difficulties.

20. The judge went on to state, at paragraph 40 of her decision, that in relation to both appellants she did not find that exceptional circumstances existed leading to unjustifiably harsh consequences for them if their application was refused. She found that the sponsor had not made any inquiries into private healthcare availability or suitability which he was able to evidence before her today. The primary evidence that she was able to rely on in terms of the existence of medical care was in Ms Moeen's report although the judge had rejected her assessment of the unsuitability of the care available. She noted that indeed Ms Moeen had accepted that the sponsor was able to pay for care for his parents in Pakistan.

21. The judge then went on to consider proportionality and Article 8 outside the Rules, and concluded that there would not be unjustifiably harsh consequences for the appellants in her refusal of their claim.

22. The appellants sought and were granted permission to appeal against the judge's decision, first that in paragraph 40 she had applied additional requirements for the adult dependants and relative Rules by conflating them with Article 8 outside the Rules; secondly she was not entitled to reject parts of the evidence for reasons set out in the grounds. The respondent put in a skeleton argument as a consequence of directions made on 28 October 2020.

23. In his submissions Mr Briddock adopted and developed the points made in the grounds of appeal. As regards ground 1, the judge at paragraph 40 in imposing an exceptional circumstances element to paragraph E-ECDR.2.5 erred in that there was no such requirement and she had conflated the test outside the Rules with the requirement within the Rules.

24. As regards ground 2, with regard to the evidence of Mr Iqbal, though he had presented his letter as "expert opinion" it was clear that he was actually a witness of fact. He was a health professional in the appellants' local area and personally knew and had responsibility for the appellant. It was correct that the letter did not comply with the Practice Direction but the judge had nevertheless erroneously discounted Mr Iqbal's direct

knowledge of the appellants, the availability of care in their local area and the care system in Pakistan generally.

25. As regards the evidence of Ms Moeen, the judge had considered the report selectively. Also she had erred in concluding that the opinion was based on materials from 2003, 2006 and 2015, as the footnotes to relevant passages included reports from 2011, 2015 and 2017. Also the judge had given no reasons for her finding that the conclusions and manner of writing of the report were presented as if Ms Moeen was advocating on behalf of the appellants.

26. As regards the report of Dr Halari, the judge had erred in referring back to paragraph 19 of her judgment, in that that was a brief sentence that they met the requirements of E-ECDR.2.1 and it was unclear how this related to Dr Halari's report. In addition the judge had mis-recorded the evidence, in that it was true that one of the appellants' sons had said their mother did 50% of the talking, but also the other son had said the doctor did "tests" on the appellant and was unable to say how long these tests took. Dr Halari's expertise had not been challenged by the respondent at the hearing. The judge was not entitled to discount her report on the basis of how long the first appellant and her sons talked at the interview with her. Even if Dr Halari had strayed outside her expertise in what she said about the ability of the appellant to remain in a care home in Pakistan, it was an error of law to discount the entirety of her report on that basis and the basis of how long the appellant and her sons spoke to Dr Halari.

27. Further the judge was not entitled to discount the evidence of the appellants' sons for the reasons given. In essence she had discounted their evidence as they did not produce documentary evidence for the searches they had performed to find a carer or care home for their parents. They had however provided the evidence set out of a local health advisor, a country expert and their own evidence of what they had done to find a carer for their mother. They had not claimed that they could not find a carer but rather that the system in Pakistan did not provide for criminal record checks or qualifications. This was supported by other evidence. The judge was not entitled to discount that evidence simply because the internet searches were not provided. The judge was not entitled to reject the evidence for the reasons given.

28. In the respondent's skeleton argument, which was adopted by Mr Walker, it was argued that the judge had done no more at paragraph 40 than sum up her case and had already found at paragraph 39 that the requirements of the Rules were not met.

29. As regards ground 2, this was no more than disagreement. The judge was entitled to treat Mr Iqbal's letters as an expert opinion as that was how he described them. In the alternative he could not properly be described as a health professional. He was a school health and nutritional supervisor and the judge was therefore entitled to find he was not in a position to provide

an objective and reasoned opinion on the availability of care for the elderly in his local area.

30. As regards Ms Moeen's report, the judge was entitled to reject it, having noted clear flaws in the report, including the fact that it appeared to be based on the fact that the appellants were in the United Kingdom and being returned to a country where they had not been receiving treatment and had no family, which was clearly not the case. The judge was entitled to reject a report where it appeared to stray into advocacy, as the judge noted it clearly did in its use of overly emotive terminology. Nor was the availability of medical or residential care in Pakistan something within the expert's claimed area of expertise in her CV. It was open to the judge at paragraph 36 of her decision to find that Dr Halari had no expertise in the availability of care facilities in Pakistan, not that she had no expertise to diagnose medical conditions, which in fact the judge accepted. It was also open to the judge to reject oral testimony unsupported by any objective supporting evidence that the UK based sponsors had undertaken their own research as to care facilities in Pakistan.

31. Mr Walker adopted the skeleton. He did not have the reports in front of him but he commented that the judge seemed to be overly critical of Mr Iqbal's report when it was quite clear that he was a witness and not an expert and also with regard to Ms Moeen's report it was a hard line to take in respect of a witness who was characterised as an expert.

32. Mr Briddock had no further points to make.

33. I reserved my decision.

Discussion

Ground 1

34. I do not consider that the judge can properly be said to have erred in law with respect to the issue raised in ground 1. As was pointed out in the respondent's skeleton argument, she had already reached her conclusion on whether the appellants had met the requirements of E-ECDR.2.5 in the first sentence of paragraph 38, expressly basing this in light of her above findings. There is no indication that at that point of her decision she was applying a further test to the existence of exceptional circumstances, and clearly it was a mistake to do so at paragraph 40. But in my view she had by then already come to a reasoned conclusion on the issues and as a consequence I do not consider that she can be said to have materially erred in law in what she said in paragraph 40 of her decision.

Ground 2

35. With regard to the report of Mr Iqbal, as he presented his letter as being a "expert opinion", it was fully open to the judge to conclude that that was how his evidence was put forward, rather than the contention made on the appellants' behalf that he was clearly only a witness of fact. He listed his qualifications as a school health and nutrition supervisor, and as such it was open to the judge to find that he could not comment on issues such as the impact on the appellants if they were required to move from their village to obtain care or how their conditions might deteriorate without the physical presence of their family members. She rightly observed that the letter of Mr Iqbal did not comply with the requirements of paragraph 10 of the Practice Direction. The judge placed little to no weight on his conclusions. The fact that, as is argued in the grounds of appeal, Mr Iqbal is a health professional in the appellants' local area and personally knows and has responsibility for them, did not preclude the judge from finding as she did. The fact that he is in the broadest sense a health professional did not preclude her from concluding that, given the nature of his qualifications as set out by him, he was not able to comment on the matters she referred to in her decision at paragraph 24, ie the impact of (sic) the appellants if they were required to move from their village to obtain care or how any such condition may deteriorate without the physical presence of their family members.

36. I also consider that it was open to the judge to be concerned at the absence of evidence of searches made by the appellants' sons with regard to care facilities in Pakistan. It is of course true as Mr Briddock pointed out that the evidence that the judge had before him in the form of the reports was evidence obtained by them, but the evidence that they said existed in this regard they did not have with them, and it was open to the judge to find that as she said, minimal inquiries were made by them in relation to care facilities and that if they had made the inquiries they stated they would have been able to provide evidence of those searches at the hearing.

37. With regard to the report of Ms Moeen, again I consider it was open to the judge to conclude that as she is an academic and a lawyer it was not within her expertise to comment on such matters as the availability of care facilities for people such as the appellants. The judge noted that the reports she had previously provided relate to risk of harm or persecution and family/religious values in Pakistan and she had not shown what particular personal experiences she had had which made her able to comment on the availability of care facilities. She also, as the judge noted, erred in that she spoke of the appellants as if they were already in the United Kingdom, and the assessment of the criminality the appellants might be subject to had no foundation in the evidence that had been provided in that no incidents had been referred to or had been feared by the appellants since their children began to live abroad. It was also relevant to note that she had said that without their children the appellants could not perform daily matters and yet their last child left for the United Kingdom in 2015. It was relevant also to note that she agreed

that there were some care facilities available in Islamabad and Karachi and that the sponsors were able to pay for the appellants' care. I also consider it was open to the judge to regard parts of the evidence of Ms Moeen as essentially advocacy. Though the matter was not expressly tied in by the judge, I consider that her conclusion in that regard at paragraph 28 was justified with regard to what was quoted at paragraph 28 where Ms Moeen stated "you do not need much of an imagination to foresee the misery of those left on their own in such institutions" in the absence of any knowledge or evidence and on the basis of inference alone.

38. It was also open to the judge in my view with regard to the report of Dr Halari to conclude that there was nothing in her CV which showed that she had any expert knowledge of the facilities available in Pakistan where care could be provided for the appellants' day-to-day needs. The judge accepted the evidence given by Dr Halari in the context of her specific qualifications as being a doctor and her diagnoses were accepted. It was relevant to bear in mind the extent of the contribution in the meeting with Dr Halari provided by the appellants' sons.

39. As a consequence, and bearing in mind also the fact the judge took into account that Mrs Kausar was still in Pakistan and looking after the appellants, the conclusions set out at paragraphs 38 and 39 of the decision were open to the judge, and also the conclusions at paragraphs 40-42 . Of course there has been a change of circumstances in that sadly the appellant is now on her own, but I have to consider the judge's decision in the context of the evidence and the circumstances before her. It may well be that the relevant circumstances have now changed to the extent that as a consequence at some point a further application may become appropriate. But as matters stand I consider that the judge has not been shown to have erred in law.

40. This appeal is dismissed.

No anonymity direction is made.

Signed Date 17 March 2021

Upper Tribunal Judge Allen