



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/18185/2019

THE IMMIGRATION ACTS

Heard Remotely at Field House
On 5 February 2021

Decision & Reasons Promulgated
On 1 July 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MUHAMMAD SALEEM AKHTAR
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Jones, Counsel, instructed by Briton Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against the decision of the respondent on 23 October 2019 refusing him leave to remain on human rights grounds.
2. The appellant entered the United Kingdom with his wife on 17 August 2011. They had entry clearance valid for 180 days as a visitor in accordance with their two year multi entry family visit entry clearance. On 14 February 2012, a few days before his six months' (180 days') maximum length of visit was about to lapse he claimed indefinite leave to remain on the basis that he was a parent of a person settled in the United Kingdom. That application was refused and the subsequent appeal

dismissed. Permission to appeal to the Upper Tribunal was granted but the appeal was dismissed and the appellant became appeal rights exhausted on 18 July 2013.

3. When this appeal was dismissed by the Upper Tribunal, Upper Tribunal Judge McKee said (I am told, I have not seen the judgment) that “the appeals are allowed to the limited extent that the decisions to remove the appellants are unlawful”. The appeals against the other decisions were dismissed on all other grounds.
4. I mention this because it features in the appellant’s witness statement and in the papers before me but as far as I can see nothing turns on the point. While the Upper Tribunal upheld the decision to dismiss the appeal on human rights grounds and/or under the Rules, Judge McKee pointed out that there should not have been a removal decision. I find that does not impact on my decision at all.
5. It seems that the appellant remained in the United Kingdom apparently without permission and on 24 February 2017 made further representations which were not treated as a fresh claim and were refused with reference to paragraph 353 of HC 395 on 4 January 2018. The decision that they were not a fresh claim was challenged by way of judicial review but permission was refused on 1 August 2018.
6. On 5 February 2019 the appellant applied for leave to remain on the basis of his private and family life. That is the application that led to the decision complained of. It is accepted that the appellant’s wife died on 19 October 2019. The appellant suffers from various health problems and it is his case that he has found it difficult to come to terms with his wife’s death. The appellant married on 5 April 1974 and so had been married for over 45 years when his wife died.
7. Permission to appeal to the Upper Tribunal was given by Upper Tribunal Judge Kekic. Unusually I set out most of the reasons for granting permission because, with respect, it sets the scene for the appeal before me. Judge Kekic said:

“[The appellant] recently lost his wife and seeks to remain in the UK with his two sons and their families. He suffers from numerous health conditions, including kidney and heart disease, depression, memory impairment and anxiety.

The grounds are not clearly presented but appear to be an attack on the judge’s conclusion that there were no very significant obstacles to the appellant’s reintegration on return to Pakistan.

The judge accepted that the appellant needed care and supervision, that this was being provided here by relatives and that his two married daughters in Pakistan would not be able to provide it. However, she concluded that arrangements could be made for a carer in Pakistan.

Arguably the judge’s finding that a carer could replace the round the clock care and supervision provided here by his family was unreasonable and the conclusion that he would not face very significant obstacles on return was consequently flawed.”

8. Regrettably the use of the word “unreasonable” caused some misunderstanding leading to a rather inappropriate “Rule 24” notice, pointing out that “reasonableness” was not the necessary test but not appreciating that Judge Kekic had in mind that the issue was whether the First-tier Tribunal Judge’s decision although clear was “unreasonable” in public law terms.

9. I turn now to the decision of the First-tier Tribunal that is the subject of the appeal before me.
10. The judge directed herself, correctly, that the most helpful Immigration Rule for the purpose of conducting an Article 8 balancing exercise was 276ADE. It is plain from paragraph 25 on the Decision and Reasons that the judge had in mind paragraph 276ADE(vi) which provides that a person seeking to show that he has established a human right to remain in the United Kingdom based on private life who is over 18 years of age but has not lived in the United Kingdom for twenty years would face “very significant obstacles” in the way of his integration into (in this case) Pakistan. The judge then reminded herself that the appellant had made an earlier application and considered the decision promulgated on 4 April 2013, reminding herself, again correctly, that this decision was a necessary starting point.
11. The judge also reminded herself that she should be alert to new evidence and found the two new circumstances that might make a difference are the appellant’s declining health and that fact that his now widowed and so without a partner.
12. At paragraph 28 of the Decision and Reason the judge found that the appellant had lived for 67 years in Pakistan and would certainly be enough of an insider to know how life in Pakistan is carried on but was “not satisfied that the appellant will have the capacity to participate or to operate without family support”. The judge noted that the appellant has sons in the United Kingdom and married daughters in Pakistan. However the judge found that although they could not provide for the appellant’s day-to-day care, they would give him emotional support.
13. When the appellant last lived in Pakistan he had accommodation provided by the government of Pakistan which could not be expected to be available now but the judge did not accept that it would be “impossible” to rent suitable accommodation, or even that finding accommodation would be “a significant obstacle” because the appellant has a pension and was therefore able to rent.
14. The judge noted the appellant had health problems and this health generally had deteriorated. He had had a heart condition when he arrived in 2011 but since then, in 2014, he had suffered another heart attack. In 2012 he was diagnosed with chronic kidney disease and had suffered mental health problems and memory problems since he was widowed and been prescribed antidepressants. The judge said that the appellant would “clearly” need a carer but noted there was no evidence to say the sons could not assist paying for a carer if necessary. The judge acknowledged evidence from the sponsor that there was no way of ensuring the care was of a professional standard.
15. The judge found that in the event of the appellant’s return he would continue to receive a pension and support from his family and would be able to access the Pakistan healthcare system as he had done when he lived there and previously.
16. The judge found that he would be able to find accommodation.
17. The judge acknowledged that the appellant’s sons do not want him to be alone in Pakistan but that is not the point. When he came to the United Kingdom he came on a temporary basis and ought not to have had any expectation of settling. With the

support of family members or carers he could participate and operate in Pakistan and the judge concluded that none of the obstacles raised could not be overcome or that overcoming them would cause serious hardship.

18. The judge particularly directed her mind to a letter from a Dr Nishtar. This is at page 31 of the bundle dated 10 February 2020. Dr Salman Sanzar Nishtar is a consultant cardiologist whose report of 16 January 2020 includes the observation:

“I believe you are currently not fit to return to Pakistan without strong family support as well as to undertake a long haul flight”.
19. This sentiment is repeated at the end of the letter with the observation:

“overall your current mental and physical health requires close family support and supervision, which is available in the UK”.
20. The judge noted that the sponsoring son had indicated that he had considered going to Pakistan if necessary and the judge said at paragraph 30:

“There is no reason why the family could not return to Pakistan with the appellant, see him safely settled and cared for and then return to the UK. I therefore find that the appellant has not shown that there are very significant obstacles to his integration back into Pakistani society.”
21. The judge then explained why in her judgment the appellant could not rely on Article 3 of the European Convention on Human Rights.
22. The judge then returned to Dr Nishtar’s letter and explained that she did not understand him to be saying that the appellant could not travel or return with family support. Rather she understood that Dr Nishtar meant that return was possible with family support which the judge found was forthcoming. The judge concluded by expressing herself satisfied that the appellant could return to Pakistan “with family support” and concluded that the public interest required the appellant to be refused leave.
23. The judge did record that the appellant had not learnt English but made plain that during his time in the United Kingdom he had been supported by his immediate family and that medical bills had been settled privately. Whatever has happened here this appellant is not someone who has been a burden to the public purse and the judge made that clear.
24. The renewal grounds, drawn by Ms Jones who appeared before me, give a very helpful outline of the history of the case and important strands of evidence and complain at paragraph 25 that the judge’s finding based on the appellant’s sponsor going with him to Pakistan, and thereby separating himself from his own private and family life, particularly his wife and daughter, is not a long-term solution.
25. She said that the finding at paragraph 26 that the family support essential for the appellant’s wellbeing can be replaced by a carer is unreasonable.
26. The thrust of Ms Jones’s submission before me is that the decision was self-contradictory. The judge clearly accepted that the appellant could not cope on his own if he were just returned to Pakistan. As the judge made plain at paragraph

- 29, the decision was based on the appellant needing a carer and going back with family support.
27. With respect to Ms Jones this is not contradictory. The judge has explained how this appellant, who is clearly not a well man, can be expected to establish himself in his country of nationality. He has the funds. He has daughters who could be expected to offer some social support and family in the United Kingdom who would be prepared to travel with him and to start him off.
 28. Mr Clarke submitted succinctly that the decision was not perverse, that is it was not unreasonable but something that the judge had explained and was entitled to conclude. The judge had had regard to the medical evidence and was not contemplating a return in isolation but with the family support that the doctor said the appellant needed.
 29. Ms Jones further submitted that the appellant could not be removed in his present condition and so the appellant had shown insurmountable difficulties because he could not get himself to Pakistan to start the process of reintegration.
 30. I do appreciate that there was evidence before the First-tier Tribunal that the appellant's present state of distress following his wife's death means he is no longer able to sleep on his own but one of his sons sleep with him in his bedroom. Clearly no carer can be expected to replicate that degree of care but this is not a case where there was medical evidence to say that the appellant's present position is justified or not going to change.
 31. The First-tier Tribunal Judge was clearly contemplating the appellant being taken to Pakistan and helped to reintegrate by one of his sons with some supervision from his daughters. The sone would then return to the United Kingdom having helped the appellant start his new life. This is not perverse or contrary to the evidence but is recognising that the appellant has current difficulties but not accepting that they are very significant obstacles.
 32. I do not agree that difficulties on removal are important here. The difficulty is with very significant obstacles to integration and that is something that only starts when removal has been completed.
 33. Before concluding I just sit back and take an overview of this case. I am very aware that the appellant is now a man showing the signs of advancing years and the wholly understandable grief, expressed as deep loneliness, following the end of a marriage that lasted over 45 years. The fact of the matter is that he has been in the United Kingdom since 2011 when he arrived on a visit visa and although he has made various applications to extend that leave, his presence in the United Kingdom has been never better than extremely precarious. As far as I can see for much of the time he had no leave at all. The difficulties that will follow from returning to Pakistan now could have been diminished if he had left in the first place when his appeal was dismissed.
 34. The law is not completely unfeeling in such circumstances and does provide relief on human rights grounds but, for the reasons I have given, I am satisfied the First-tier

Tribunal Judge was entitled to conclude that they do not exist here. The very real problems in returning can be overcome.

35. The judge was entitled to conclude that the appellant will get support (not live with) his daughters in Pakistan and at least one of his sons in the United Kingdom will travel with him to help him re-establish himself.
36. A further thought occurs to me. If the appellant leaves the United Kingdom and returns to Pakistan and really cannot establish himself, he may be able to apply to come back under the Rules with the advantage of an informed application based on evidence, rather than speculation, but that is not the reason I make my decision, that is simply an observation.
37. No error of law has been established and I dismiss this appeal.

Notice of Decision

This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 30 June 2021