



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/19372/2019

**THE IMMIGRATION ACTS**

**Heard at the Birmingham Civil Justice  
Centre  
On 31<sup>st</sup> May 2022**

**Decision & Reasons  
Promulgated  
On 15<sup>th</sup> June 2022**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**MS ZAREENA KAUSAR  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr S Vokes, counsel, instructed by Connaught Law

For the Respondent: Mr C Williams, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

- 1.** The appellant is a national of Pakistan. She arrived in the United Kingdom on 15<sup>th</sup> August 2009 with leave to enter as a visitor valid until 14<sup>th</sup> January 2010. When her visit visa expired, the appellant remained in the UK unlawfully. Some three years later, the appellant applied for leave

to remain on Article 8 grounds. That application was refused by the respondent for reasons set out in a decision dated 20<sup>th</sup> August 2013. The decision did not attract a right of appeal.

2. On 8<sup>th</sup> October 2019, she again applied for leave to remain on family and private life grounds. That application was refused by the respondent for reasons set out in a decision dated 12<sup>th</sup> November 2019. The appellant's appeal was dismissed by First-tier Tribunal Judge Anthony for reasons set out in a decision promulgated on 15<sup>th</sup> March 2021.
3. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Adio on 6<sup>th</sup> May 2021. The appeal was heard by Upper Tribunal Judge Keith on 18<sup>th</sup> August 2021, and the decision of First-tier Tribunal Judge Anthony was set aside for reasons set out in his 'error of law' decision promulgated on 18<sup>th</sup> August 2021. Judge Keith directed that the decision is to be remade in the Upper Tribunal. Judge Keith rejected the appellant's claim that First-tier Tribunal Judge Anthony erred in her assessment of the appellant's 'private life' claim and whether there are very significant obstacles to the appellant's integration into Pakistan. He said:

"19. I deal first with the question of the FtT's analysis of private life and the extent to which they were very significant obstacles to integration into the appellant's country of origin, Pakistan. On the one hand, I am conscious that at §21 of her witness statement, the appellant had referred expressly to what she regarded as the cultural norms which made it only socially acceptable for her sons in the UK to look after her as opposed to a younger sibling in Pakistan.

20. Nevertheless, when I consider in the round the FtT's reasoning in relation to this issue, the FtT had done two things: first, the FtT had made an assessment of, and by reference to, the lack of cogent reasons as to why the appellant was no longer in contact with her younger brother and why contact could not be renewed. Whilst not expressly referred to, the FtT was clearly identifying the point outlined in Parveen, namely a bare assertion of a lack of contact, after many many years of living in Pakistan, was one that the FtT was entitled to reject as not cogent. That was inextricably linked to the appellant's assertion as to cultural norms and the willingness of the younger sibling to assist in Pakistan. It was no more than that, namely a bare assertion, in a context where the appellant had not explained in any detail her connections and life in Pakistan, where she had lived for the vast majority of her adult life.

21. Second, at §30, the FtT had, in any event, considered expressly the alternative of the appellant returning to Pakistan as a lone woman and one where it would more (*sic*) socially acceptable for her to live alone, together with the finding that she would continue to receive financial support from her children in the UK. Even if the appellant could not renew contact with her younger brother, she could still return to Pakistan as a lone woman, with financial means and the support of UK relatives.

22. Considering all of the FtT's findings in the round, I conclude that the FtT did not err of (*sic*) law in her conclusion that there were not very significant obstacles to the appellant's integration into Pakistan for the purposes of the appellant's private life, including by impermissibly speculating on a renewal of a relationship with a younger brother."

**4.** Upper Tribunal Judge Keith did however find that the First-tier Tribunal judge erred in her assessment of whether the appellant has a 'family life' with her adult children. He concluded the judge erred in failing to analyse the wider dependency, where the appellant has been living with one of her sons and his family since 2009 and is financially dependent on him. He was also satisfied that the judge failed to adequately carry out an assessment under GEN.3.2.

**5.** At paragraph [26], Upper Tribunal Judge Keith said:

"26. The appellant's challenge on grounds of private life fails and is dismissed. I preserve the FtT's conclusions that there are not very significant obstacles to the appellant's integration into Pakistan. There have not been any challenges to the FtT's findings that the appellant is not physically dependent on her UK relatives, for medical reasons. These findings, specifically at §37 of the FtT's decision, are preserved. However, I conclude that the FtT inadequately assessed the claimed existence of family life with UK relatives; and failed to carry out an assessment under GEN.3.2. Those two grounds of the appeal succeed..."

**6.** For the sake of completeness, it is useful to record in this decision, the preserved finding set out at paragraph [37] of the decision of First-tier Tribunal Judge Anthony to which Judge Keith referred:

"37. I turn to consider the appellant's claim that she requires care and that there is no one in Pakistan who can provide her with care. The appellant states that if she was alone, she would get very depressed and that it would affect her general well-being. She says that when she is around her children, they motivate her to get up in the morning and to be as proactive as possible. I have carefully considered the medical evidence. I find that the appellant does not suffer from a mental health condition. I have considered

the appellant's claim that she requires care from her children. She states in her witness statement that she cannot cook and manage activities of daily living. She states that she forgets to take her medication and forgets to eat. I reject the appellant's evidence that she is not able to look after herself. I find that there is simply nothing within the medical evidence presented which would suggest the appellant suffers from any mental health conditions, let alone a severe mental health condition such that she is not able to independently carry out activities of daily living. I do not accept she is depressed and find there is nothing medically to suggest that she would require motivation and support from her sons on a daily basis."

- 7.** It is against that background that the appeal was listed for a resumed hearing before me to remake the decision. For ease of reference, and without meaning any disrespect, I refer below to the appellant's children by their first names.

### **Remaking the decision**

- 8.** The appellant has appealed the respondent's decision to refuse her application for leave to remain, under s.82 of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under s.6 of the Human Rights Act 1998. The appellant must satisfy me on the balance of probabilities that Article 8 ECHR is engaged. If it is, the burden shifts to the respondent to establish that the decision is proportionate.

### **The evidence**

- 9.** At the outset of the hearing the parties confirmed that the evidence before the Tribunal is set out in the following bundles:
  - a. An appellant's bundle that was before the First-tier Tribunal comprising of 113 pages
  - b. The respondent's bundle comprising of 67 pages
- 10.** The appellant and her son, Umair Wahid, attended the hearing. Initially, Mr Vokes indicated that it does not appear that the credibility of the appellant is in issue, and he was content for me to deal with the matter on submissions. I indicated to him that it is entirely a matter for the appellant as to the evidence called, but there does seem to me to be a

paucity of evidence relating to the appellant's relationship with her sons in the UK, and her siblings abroad. I indicated that in fairness to the appellant, in the absence of any further witness statements, I might be assisted by hearing some evidence from the appellant regarding the dates on which sons arrived in the UK, the current living arrangements, and the appellant's relationship with her siblings abroad. After taking instructions, Mr Vokes informed me that the appellant will be called to give evidence and the appellant gave evidence before me. She was assisted by an interpreter arranged by the Tribunal who interpreted the Urdu and English languages. The appellant and interpreter confirmed they are able to understand each other and communicate without any difficulty.

- 11.** The appellant adopted her witness statement that is to be found at pages 11 to 16 of the appellant's bundle. She confirmed that the statement had been read to her before she signed it, and the content is true and correct. In evidence-in-chief, the appellant confirmed that she continues to live at her current address with her two sons. She said Umair, the eldest, has recently married and her daughter-in-law also lives at the address. Her daughter lives in Manchester with her two young children (*i.e. the appellant's grandchildren*). The appellant's eldest son lives in America. The appellant said her children all arrived in the United Kingdom in or about 2005. Their father, who is a British citizen, and from whom the appellant is divorced, arranged for the children to live in the United Kingdom, and they have acquired British citizenship.
- 12.** As to her siblings, the appellant confirmed she has two brothers and a sister. One of her brothers lives in Holland. The remaining brother and sister live in Pakistan. The brother lives in Faisalabad and the sister lives in Lahore. She was asked what contact she has with them. She said she speaks to them very rarely "*... because it is very busy in the house, and I am ill. I have asthma and high blood pressure. I have recently stayed in hospital...*" She explained that the recent stay in hospital was because of

her high blood pressure. She went on to explain that her siblings and their partners have their own health issues. When asked by Mr Vokes to explain why she has little contact with her siblings in Pakistan, she said that her brother is busy with his own children. The appellant confirmed that both her brother and sister in Pakistan, are married and have their own families. The appellant said that when she was living in Pakistan she did not see her brother and sister very much. She confirmed that after her children left Pakistan, she went to live with her eldest brother in Faisalabad. She said that when her brother passed away, his wife and children sold the house. Mr Vokes asked the appellant whether any of her children have been to Pakistan recently and met with their uncles and aunts. The appellant said her eldest son, Umair, had recently gone to Pakistan to get married, because his partner's parents live there. She said that the marriage had taken place in Lahore, but none of her family attended. She said that although her sister lives in Lahore she was unable to attend because she is very old, cannot go anywhere because of her age, and her husband is paralysed.

- 13.** In cross-examination, the appellant confirmed that between 2004/5 when her children arrived in the UK and 2009, when the appellant arrived in the UK, the children had visited Pakistan *“every 6 months or a year”* when they had holidays. She said that when she came to the UK she knew that she had been granted a visit visa for a short period. She accepted that the application she made in 2012 for leave to remain had been refused. When asked why she did not return to Pakistan after the application had been refused, the appellant said her blood pressure was high and the doctor had told her she cannot travel. She said that she also has asthma and has to use inhalers. She was asked whether her symptoms of high blood pressure and asthma can be treated in Pakistan. She accepted they could, but the treatment is not as good as it is here. When asked whether she has discussed with her children what she will do if she has to leave the UK, the appellant simply said that she has no one in Pakistan. Finally, the appellant was asked why her youngest son, Hamza, could not live

with her in Pakistan. The appellant said that he is settled in the UK and is getting engaged next month.

### Submissions

**14.** The parties' submissions are a matter of record and there is little to be gained by me setting out the submissions at any length in this decision. Broadly stated, Mr Williams submits there is a preserved finding that the appellant is not physically dependent on her UK relatives, for medical reasons. He submits there is evidence of cohabitation in the sense that the appellant lives in the same property as her two adult sons, but that in itself is not enough to establish family life for the purposes of Article 8. He submits that at paragraph [26] of their witness statements, the appellant and her sons claim they have developed a close relationship because they live together. The appellant's sons are adults who are both in full-time work, and the focus will inevitably have shifted towards their own families. Mr Williams refers to the decision of the Supreme Court in Agyarko v SSHD [2017] UKSC 11, in which Lord Reed said:

"49. In *Jeunesse*, the Grand Chamber said, consistently with earlier judgments of the court, that an important consideration when assessing the proportionality under article 8 of the removal of non-settled migrants from a contracting state in which they have family members, is whether family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host state would from the outset be "precarious". Where this is the case, the court said, "it is likely only to be in exceptional circumstances that the removal of the non-national family member will constitute a violation of article 8" (para 108)."

**15.** Here, Mr Williams submits, the appellant entered the United Kingdom as a visitor and had no expectation that she would be permitted to remain in the long term. If there were any doubt, the appellant will have known that she could not remain in the UK when her previous application made in 2012 was refused. The appellant has remained in UK unlawfully for a substantial time. There is no physical dependency on her sons and there is a finding that there are no significant obstacles to the appellant's integration in Pakistan. The appellant was previously separated from her

children in 2004/5 and that was mitigated by regular visits to Pakistan by the children. That can continue in the future. The appellant refers to her allergy, high blood pressure and asthma, but Mr Williams submits, she accepts that treatment would be available to her in Pakistan.

- 16.** In reply, Mr Vokes invites me to find the appellant has established a family life with her children in the UK. He refers to the decision of the Court of Appeal in Rai v ECO [2017] EWCA Civ 320 in which the Court of Appeal held that a judge had misdirected himself in law when he applied a test of "exceptionality" to the question of whether an adult dependant had a family life with his parents for the purposes of Article 8. The Court held that throughout his findings, the judge had focused on the parents' decision to leave Nepal and settle in the UK, without focusing on the practical and financial realities entailed in that decision. That was a mistaken approach because it did not confront the real issue under Article 8 of whether, as a matter of fact, Rai had demonstrated that he had a family life with his parents which had existed at the time of their departure, and had endured beyond it, notwithstanding their having left Nepal when they did. Mr Vokes submits the evidence clearly demonstrates the appellant lives with her sons and the question is whether the appellant's sons' provide her with real, committed and effective support. Mr Vokes also refers to the decision of the Court of Appeal in Mobeen v Secretary of State for the Home Department [2021] EWCA Civ 836 in which Lady Justice Carr said that whether or not family life exists is a fact-sensitive enquiry which requires a careful assessment of all the relevant facts in the round. At paragraphs [47], she said:

"The ultimate question has been described as being whether or not this is a case of "effective, real or committed support" (see *AU* at [40]) or whether there is "the real existence in practice of close personal ties" (see *Singh 1* at [20])."

- 17.** Mr Vokes submits the appellant has not lived in Pakistan since 2009 and the ties that she has established with her children are significant. Her sons, who are now British citizens, have been providing financial support



to the appellant since her divorce in 1997. They live in the same accommodation, and it is inevitable that there will therefore be some emotional dependency between the appellant and her sons. Mr Vokes submits that in light of the preserved findings, the requirements of Appendix FM and paragraph 276ADE of the immigration rules cannot be met. Nevertheless the Tribunal is required to consider whether there are exceptional circumstances which would render refusal of leave to remain, a breach of Article 8, because such refusal would result in unjustifiably harsh consequences for the appellant, her children and grandchildren.

- 18.** Mr Vokes submits the appellant's own siblings, and their partners are elderly and frail. The appellant's evidence is that her own sister was unable to attend the recent wedding of the appellant's son because of her ill-health. Culturally, the appellant looks to her sons to provide the care and support that she requires. The appellant has no home in Pakistan, is uneducated and has now lived in the UK for a number of years. The length of her stay in the UK is such that she has deep emotional investments in her relationships with her children. Although some financial support could be provided to her, the appellant will be alone in Pakistan, aged 62, and without the emotional support she has at the moment. Mr Vokes submits s117B(4) of the Nationality, Immigration and Asylum Act 2002 requires that little weight should be given to a private life, or a relationship formed with a qualifying partner that is established by a person at a time when the person is in the United Kingdom unlawfully. Furthermore, s117B(5) requires that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. Those provisions focus upon an individual's 'private life,' not 'family life'. Nevertheless he acknowledges that the maintenance of effective immigration controls is in the public interest. Mr Vokes submits that in the end, there can be no doubt that the refusal of leave to remain will result in harsh consequences for the appellant and her children. Whether it will result in unjustifiably harsh consequences is fact sensitive, and here, Mr Vokes

submits, the evidence tips the balance in the appellant's favour such that I should allow the appeal on Article 8 grounds.

### Findings and conclusions

- 19.** In reaching my decision I have had regard to all the evidence before me, whether or not it is referred to. I have had regard, in particular to the evidence set out in the witness statements of the appellant and her two sons, which for all intents and purposes are identical. I have had the opportunity of hearing the oral evidence appellant and seeing her evidence tested in cross-examination.
- 20.** In considering the oral evidence, I have borne in mind the fact that events that occurred some time ago can impact on an individual's ability to recall exact circumstances. I also recognise that there may be a tendency by a witness to embellish evidence because although the core of the claim may be true, he/she believes that by embellishing their evidence, the claim becomes stronger. I also remind myself that if a Court or Tribunal concludes that a witness has lied about one matter, it does not follow that he/she has lied about everything. A witness may lie for many reasons, for example, out of shame, humiliation, misplaced loyalty, panic, fear, distress, confusion, and emotional pressure. I have been careful not to find any part of the account relied upon, to be inherently incredible, because of my own views on what is or is not plausible.
- 21.** Insofar as the appellant relied upon paragraph 276ADE of the immigration rules in support of her claim for leave to remain on the grounds of private life, the appellant's claim has already been addressed in the decisions of the First-tier Tribunal and Upper Tribunal Judge Keith. The appellant claims in her witness statement, at paragraph [8], that the respondent did not consider the specific route she applied under, which was the 'adult dependant relative route'. I record from the outset that it has formed no part of the appellant's case at the hearing before me that

she meets the requirements for indefinite leave to remain as an adult dependent relative set out in Section R-ILRDR of Appendix FM. Any such claim is bound to fail at the first hurdle because the appellant cannot meet the requirement that she must be in the UK with valid leave to remain as an adult dependent relative. Before me, it is uncontroversial that the appellant cannot satisfy the requirements for leave to remain on private or family life grounds as set out in the immigration rules. The appellant's application for leave to remain, so far as relevant to this appeal, is not made under the immigration rules, but rather outside the Immigration Rules, on Article 8 grounds.

**22.** I begin by considering whether the appellant has established a family life with her adult sons in the UK, with whom she has lived since her arrival in 2009. The relevant principles relating to family life in the case of adults have been explored in a line of well-known authorities. In Mobeen v Secretary of State for the Home Department, Lady Justice Carr DBE said:

“45. Whether or not family life exists is a fact-sensitive enquiry which requires a careful assessment of all the relevant facts in the round. Thus it is important not to be overly prescriptive as to what is required and comparison with the outcomes on the facts in different cases is unlikely to be of any material assistance.

46. However, the case law establishes clearly that love and affection between family members are not of themselves sufficient. There has to be something more. Normal emotional ties will not usually be enough; further elements of emotional and/or financial dependency are necessary, albeit that there is no requirement to prove exceptional dependency. The formal relationship(s) between the relevant parties will be relevant, although ultimately it is the substance and not the form of the relationship(s) that matters. The existence of effective, real or committed support is an indicator of family life. Co-habitation is generally a strong pointer towards the existence of family life. The extent and nature of any support from other family members will be relevant, as will the existence of any relevant cultural or social traditions. Indeed, in a case where the focus is on the parent, the issue is the extent of the dependency of the older relative on the younger ones in the UK and whether or not that dependency creates something more than the normal emotional ties.

47. The ultimate question has been described as being whether or not this is a case of "effective, real or committed support" (see *AU* at [40]) or whether there is "the real existence in practice of close personal ties" (see *Singh 1* at [20]).

- 23.** The appellant was born on 2<sup>nd</sup> October 1959 and is now 62 years of age. She was married to Mr Abdul Wahid and there are three children of that relationship. Sara was born in Faisalabad on 29<sup>th</sup> July 1987. Umair was born on 23<sup>rd</sup> November 1990 in Faisalabad and Hamza was born in Faisalabad on 29<sup>th</sup> July 1995. The appellant and Mr Abdul Wahid divorced in October 1997. The appellant remained in Pakistan living with her children until 2004/2005 when the children moved to the United Kingdom. First-tier Tribunal Judge Anthony previously found, at [25], that when the appellant was divorced, *“she was not ostracised by her family, and she was taken in and supported financially by her eldest brother...”*.
- 24.** The evidence of the appellant, which I accept, is that her children entered the United Kingdom to join their father, who had acquired British citizenship. I also accept the appellant’s evidence that following the departure of her children from Pakistan, she continued to live with her brother until his death in 2009. Although the evidence before me is very vague, I also accept the appellant’s evidence that between 2004/5 and 2009, her children visited her in Pakistan whenever they were able to do so, and when their work commitments permitted.
- 25.** The appellant claims, at paragraph [3] of her witness statement that she depends on her children in every aspect of her life, especially emotionally and financially. At paragraph [9] she states that she is both financially and emotionally dependent on her children. At paragraph [19], the appellant states that her children have provided financial support for many many years since 1997, and especially since her entry to the United Kingdom in 2009. She claims they have developed close emotional ties, especially since her divorce, and her children are all that she has and the only people she can turn to. She claims that when she is around her children, they motivate her to get up in the morning and to try and be as proactive as possible. The claims made by the appellant are repeated in the witness statements of the appellant’s two sons. At paragraph [8] of each of their witness statements, the appellant’s sons’

state that their mother is, and has been dependent on them since her divorce in 1997. They both state that she requires their care and support, especially emotionally and financially. At paragraph [19] of each of their statements, they state that the appellant relies on them to take her to appointments and care for her in all aspects. In a letter signed by Hamza that is to be found page 112 of the appellant's bundle, Hamza refers to the bond between him and his mother and the financial support he has provided to her. In a letter signed by Sara that is to be found page 113 of the appellant's bundle, Sara refers to her relationship with her mother and how, as an adult, the roles are reversed, and her mother has become more reliant on her and her brothers. She refers to the deterioration in the health of the appellant and to the support and care provided by her and her siblings.

- 26.** Judge Keith expressly preserved the finding previously made by First-tier Tribunal Judge Anthony that there is simply nothing within the medical evidence presented which would suggest the appellant suffers from any mental health conditions, let alone a severe mental health condition such that she is not able to independently carry out activities of daily living. First-tier Tribunal Judge Anthony did not accept the appellant is depressed and found there is nothing medically to suggest she will require motivation and support from her sons on a daily basis.
- 27.** I accept the evidence of the appellant and her sons that they have lived together at the same address since the appellant's arrival in the UK. I am satisfied that there is a good deal of love and affection between the appellant and each of her children, but that in itself is not sufficient. There is scant evidence before me regarding the financial support provided to the appellant by her sons' in particular. The appellant and her sons make the bare assertion that financial support is provided but there is no evidence before me of any regular payments made by the appellant's sons to her. I accept that the appellant and her sons live in the same property and as the appellant is here unlawfully, she will

therefore have no income of her own. On balance, she is likely to receive some financial support from her sons, although the extent of that support is far from clear. It is likely in my judgement that the household costs are in effect, met by the appellants sons, and the appellant's daily costs of living are largely subsumed within that expenditure. The appellant's sons were no doubt reliant upon the appellant when they all live together in Pakistan, and I accept that following their arrival in the UK, the appellant and her children have benefited from the mutual support they provide each other. Until recently, neither Umair nor Hamza, had formed independent relationships or their own family units. I am satisfied for present purposes that the appellant has established that she has a family life with two sons, with whom she lives, in particular. There is some force in the submission made by Mr Williams that going forward, the focus of the family lives of the appellant's sons is likely to be on their own individual family units. Umair is now married, and Hamza is soon to be engaged. The family dynamics are likely to change going forward, but as matters stand, I am just persuaded, carrying out an assessment of all the relevant evidence in the round, that the appellant enjoys family life with her sons and Article 8 is engaged.

- 28.** I find that the decision to refuse the appellant leave to remain has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The central issue in this appeal is whether the decision to refuse leave to remain is proportionate to the legitimate aim.
- 29.** In a human rights appeal, although the appellant's ability to satisfy the immigration rules is not the question to be determined, it is capable of being a weighty factor when deciding whether the refusal is proportionate to the legitimate aim of enforcing immigration control. As set out by the Court of Appeal in TZ (Pakistan) [2018] EWCA Civ 1109,

compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules. Conversely, if the rules are not met, although not determinative, that is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control.

- 30.** There is a preserved finding that the appellant has not established that there would be very significant obstacles to the appellant's integration into Pakistan. In reaching that finding, First-tier Tribunal Judge Anthony found that the appellant spent 12 years in Pakistan as a divorced woman and was not ostracised by her family. She was in fact taken in and supported financially by her eldest brother. First-tier Tribunal Judge Anthony found the appellant can still speak the language and is likely to possess sufficient understanding of the culture and life in Pakistan, having lived there until the age of 49. She found that the appellant is not a 'younger woman,' and it is likely to be more socially acceptable for her to live alone as compared to a 'younger woman'. She also found the appellant has provided no cogent reason why she is no longer in contact with her siblings, or alternatively, why that contact cannot be renewed if she returns to Pakistan. At paragraph [32], First-tier Tribunal Judge Anthony said:

"The fact the appellant has sufficient 'insider knowledge' of life in Pakistan, coupled with the support of her family in Pakistan and the support of her family in the United Kingdom leads me to the conclusion that she would face a little difficulty with integration on return.."

- 31.** The appellant arrived in the UK on 15<sup>th</sup> August 2009 having been granted a family visit visa valid from 14<sup>th</sup> July 2009 until 14<sup>th</sup> January 2010. The appellant accepted in her evidence before me that she was aware that she was granted entry to the UK for a short period only. I find that not

only was the appellant aware that she had been granted leave to enter for a limited period, but that she and her children were also aware that in order to satisfy the decision-maker that the appellant was a genuine visitor, she knew she was required to leave the UK at the end of the visit and that she would not live in the UK for extended periods or make the UK her main home. The requirements for a visit visa set out in the immigration rules, at Appendix V, include a requirement that the applicant must satisfy the decision-maker that they are a genuine visitor. That means the applicant will leave the UK at the end of their visit. It follows that when she made her application for a visit visa, she was aware that she would be required to return to Pakistan after a short visit and she will have expected to have to do so, relying upon the on-going support of her remaining siblings in Pakistan and the financial support of her children in the UK.

- 32.** The appellant has now lived in the United Kingdom with her sons since August 2009, a period of almost thirteen years. Before me, the appellant claimed she did not return to Pakistan even after first application for leave to remain had been refused because she was suffering from high blood pressure and asthma and was advised by the doctor that she could not travel. There is no medical evidence before me to support that claim, and I do not accept the bare assertion made by the appellant. In the absence of any medical evidence to support the claim that she was so unwell throughout that was at all times unable to travel, the claim made by the appellant does not begin to explain why she had been unable to return to Pakistan since January 2010.
- 33.** The appellant's evidence before First-tier Tribunal Judge Anthony, as recorded at paragraph [20] of her decision, was that it would be unreasonable to burden her extended family members in Pakistan, as she does not have any contact with them. She claimed it would not be possible for her to live alone. As I have already said, those claims were rejected. First-tier Tribunal Judge Anthony found the appellant provided



no reason why she is no longer in contact with her siblings, or alternatively, why that contact cannot be renewed on return to Pakistan. At paragraph [31] of her decision, First-tier Tribunal Judge Anthony noted the appellant has not spoken of any family rifts, ostracism or other issues which would prevent her from living with her brother. For the avoidance of any doubt, I too reject the appellant's claim that she is no longer in contact with her siblings in Pakistan. The appellant was very vague in her evidence before me regarding her relationships with her siblings and the contact they have. In her evidence before me she confirmed that her brother continues to live in Faisalabad and her sister lives in Lahore. When asked about the contact she has with them she claimed she had "very little" and spoke to her siblings rarely "because it is very busy in the house" and "I am ill with asthma and high blood pressure". When she spoke about Umair's recent wedding in Lahore, she said that none of her family had attended. When asked why, she confirmed that it was because they are old and because of their own health. In particular, her sister and brother-in-law, who live in Lahore, were not invited because they are frail and her sister's husband (i.e. her brother-in-law) is paralysed. I noted that at no point during any of her evidence when she was speaking about her family did she claim that there was no contact between them, or that there had been a breakdown in their relationship. In my judgement, the appellant has sought to embellish her evidence to give the impression that there is no, or limited contact between her and her siblings, in the misconceived hope that the Tribunal might be persuaded that there will be no one for the appellant to turn to, for support in Pakistan. I was left in no doubt that family relationships are important to the appellant and having had the opportunity of hearing the appellant give evidence, I find that the appellant has maintained contact with her siblings and their families in Pakistan. Like First-tier Tribunal Judge previously, I find there is no evidence at all of any rift in the family, and the appellant can seek support of her siblings upon return to Pakistan.

- 34.** As I have already noted, the evidence regarding financial support is limited. I accept the evidence of the appellant and her sons that the appellant received financial support from her children following their arrival in the United Kingdom, until 2009. I have accepted that the appellant is likely to have received some financial support from her sons during the time she has remained in the UK, although the extent of that support is far from clear. There is in my judgement no reason whatsoever why the financial support that has been provided to the appellant cannot continue if the appellant is required to return to Pakistan.
- 35.** Insofar as the appellant's health is concerned, again, the medical evidence before me is very limited, but the appellant acknowledges that she could access the health service in Pakistan, albeit the service may not be to the same standard as in the UK.
- 36.** Having heard from the appellant and having read the statements and letters before me, I have no doubt that the appellant would prefer to live in the United Kingdom and to be close to her children. She is now 62 years old and although she lived apart from her children between 2005 and 2009, she has been living with her sons in the UK for almost thirteen years. The preference to remain in the UK with her children and grandchildren, does not equate to a right to do so. The appellant's siblings remain in Pakistan and, I find, would be available to support the appellant. She would have the benefit of on-going financial support from her children.
- 37.** I have considered Appendix FM GEN.3.2 and whether there are exceptional circumstances which would render refusal of entry clearance a breach of Article 8 because such refusal would result in unjustifiably harsh consequences for the appellant or her family. The appellant will be separated from her children and grandchildren, but this is a family that has lived apart previously and maintains ties to Pakistan. Umair was

recently in Pakistan for his wedding. His wife's family, the appellant said, live in Lahore. There is no reason why the appellant's children cannot visit the appellant in Pakistan. They did so regularly between 2005 and 2009 and will be able to do so in the future. Although the refusal of leave to remain will impact upon the appellant's ability to see her children and grandchildren as often as they might like, I am not satisfied that the refusal of leave to remain results in unjustifiably harsh consequences for the appellant, her children, grandchildren and the wider family. The family has demonstrated its ability to provide support and maintain their close relationships when the appellant lived in Pakistan previously, despite the distance.

- 38.** It follows that in my judgment, the appellant cannot meet the requirements of the Immigration Rules.

Whether refusal of leave to remain is nevertheless disproportionate

- 39.** I have carefully considered whether the decision to refuse the appellant leave to remain is nevertheless disproportionate. The ultimate issue is whether a fair balance has been struck between the individual and public interest; GM (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1630. In reaching my decision, I have had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002. The maintenance of immigration control is in the public interest. The appellant is not able to speak the English language. She also does not work but is supported by her family in the UK. These are however nothing more than neutral factors in my assessment of proportionality.

Balancing exercise

- 40.** The factors that I consider weigh against the appellant are:

- a. The maintenance of effective immigration controls is in the public interest. I have found that the appellant does not meet the Immigration Rules.
- b. Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. The appellant arrived in the UK lawfully, but her immigration status has always been precarious.
- c. The strength of the appellant's family life in the UK developed at a time when her status was precarious. The appellant remained in Pakistan when her children left in 2004/5. The appellant acknowledges that she entered the United Kingdom as a visitor and that her stay would only have been for a short period. The appellant has remained in the UK unlawfully since January 2010.
- d. On the findings made, it is perfectly possible for the appellant to return to Pakistan where the appellant retains ties. The appellant and her children may wish to continue their life together in the UK, but Article 8 does not equate to an absolute right to do so in law.
- e. The impact of any separation can be reduced by the appellant's children and grandchildren visiting the appellant in Pakistan and communicating by using technology in the meantime, as they have done previously.
- f. There is no reason why the appellant's children cannot continue to provide the appellant with any financial support she requires, as they did previously.
- g. Any medical treatment the appellant requires, is available to the appellant in Pakistan.

**41.** The factors that I consider weigh in favour of the appellant:

- h. The appellant arrived in the UK lawfully and has taken steps to regularise her immigration status.
- i. The appellant's family relationships were formed prior to her arriving in the UK rather than whilst her immigration status was precarious. She has lived with her sons in the UK for almost thirteen years such that the bond between them is likely to have deepened with the passage of time. A return to Pakistan would mean that the appellant would be separated from her children and grandchildren in the UK.
- j. Although the appellant has siblings in Pakistan with whom I find she remains in contact and who will provide her with support, that is not the same as the support the appellant would wish and expect to receive from her own children.

k. The appellant has received some treatment in the UK for allergies to dust and pollen and was previously diagnosed with 'excess thyroid.' She also has high blood pressure.

**42.** In my final analysis, having considered all the evidence before me in the round, and although I have accepted the refusal of leave to remain will interfere with the appellant's family life, in my judgement, the interference for the purposes of the maintenance of effective immigration control is proportionate and, it follows, lawful.

**43.** It follows that I dismiss the appeal.

### **Notice of Decision**

**44.** I dismiss the appeal on the basis that the refusal of leave to remain does not breach section 6 Human Rights Act 1998 (based on Article 8 ECHR).

**45.** No anonymity direction is made.

Signed **V. Mandalia**

Date 6<sup>th</sup> June 2022

**Upper Tribunal Judge Mandalia**