



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

Appeal Number: HU/20502/2019

THE IMMIGRATION ACTS

**Heard at the Birmingham Civil Justice
Centre
On 3 March 2022 and 17 March 2022**

**Decision & Reasons
Promulgated
On 11 May 2022**

Before

**UPPER TRIBUNAL JUDGE MANDALIA
and
DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

Between

**MS QURBAN BEGUM
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rashid, counsel, Rochester Chambers (instructed by Kabir Ahmed & Co solicitors)

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 11 February 2019 with leave to enter as a visitor using a multi-visit visa valid until 11 August 2019. On 23 July 2019, she applied for leave to remain. Her application was refused by the respondent for reasons set out in a decision dated 29 November 2019. The appellant's appeal was dismissed by First-tier Tribunal Judge Watson for reasons set out in a decision promulgated on 18 March 2020.

2. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Adio on 21 April 2020. Upper Tribunal Judge Lindsley decided the appeal on the papers under Rule 34 of the Upper Tribunal Procedure (Upper Tribunal) Rules 2008. Neither party objected to the determination as to whether the decision of the First-tier Tribunal is tainted by an error of law being decided on the papers under Rule 34. Upper Tribunal Judge Lindsley set aside the decision of First-tier Tribunal Judge Watson for reasons set out in her 'error of law' decision promulgated on 12 October 2020. Judge Lindsley directed that the decision is to be remade in the Upper Tribunal. She preserved several findings from First-tier Tribunal Judge Watson's decision as follows:
 - a. The finding that the appellant has lived with her son and daughter in the UK, who are both British Citizens, since her arrival in this country in February 2019 following the death of her husband in January 2019.

 - b. The findings at paragraph [14] of the decision about the previous visits of the appellant and her husband to the UK. First-tier Tribunal Judge Watson found:

"14. Mrs Begum has made previous visits when she travelled alone to the UK to visit her family. She has never travelled with her husband

to the UK. Her husband had made separate visits to the UK on his own prior to his death....”

- c. The financial assessments of the family income of the appellant’s two children at paragraph [25] of the decision. First-tier Tribunal Judge Watson said:

“25. Mr Hussain produced a copy of his Self Assessment tax return for the tax year 18/19. This shows that he declared a total income of £24,331 for that year. This includes his profit from a business and rental income. Mrs Shahnaz Begum’s Self Assessment return shows a similar amount. I find based on these returns and on the oral evidence that this is a true reflection of the level of their income. They have provided various bank statements relating to the news agent business and showing rents received, which are hard to follow with regard to all the entries, but I find that their total household income is around £49,000. They are self-supporting and look after their own children.”

- d. The finding that the appellant has a house and land in Pakistan at paragraph [21] of the decision. First-tier Tribunal Judge Watson said:

“21. I find that the appellant has a house and land in Pakistan. Mr Hussain in oral evidence stated that he did not know what happened to the family smallholding once the appellant’s husband died, but that the family home was owned by the appellant. On the balance of probabilities I find that accommodation is available to the appellant in Pakistan. If she does not wish to live in the family home then she is able to use funds from that home to support herself.”

- e. The finding that the appellant has friends and neighbours in Pakistan made at paragraph [27] of the decision. First-tier Tribunal Judge Watson said:

“27. Whilst I find both of the appellant’s children now live in the UK and are British citizens I find that the appellant will have a network of friends and acquaintances gathered over her life in Pakistan. Her husband is now deceased, but this does not show me that she is inevitably without neighbours or knowledge of others in her village. I find that she has not lost all ties to Pakistan. She will not be a stranger in her own country on a return there.”

- f. The finding that the appellant could access the health services in Pakistan made at paragraph [23] of the decision. First-tier Tribunal Judge Watson said:

“23. I find (based on the oral evidence) that the appellant has accessed health services in Pakistan in the past and is able to do so on any return.”

- g. The finding that the appellant’s family in the UK would assist her from this country to ensure that she is looked after to the best of their abilities made at paragraph [24] of the decision. First-tier Tribunal Judge Watson said:

“24. I find that her daughter and her husband have a good sense of duty towards the appellant and will do what they can to ensure that wherever she is that she is looked after to the best of their ability.”

3. It is against that background that the appeal was listed for a resumed hearing before us to remake the decision. The hearing on 3 March 2022 started late due to Mr Rashid appearing in another hearing without the prior permission of the Tribunal. We were informed when the hearing began that the issues in the appeal are twofold. First, whether the requirements of paragraph 276ADE(1)(vi) are met by the appellant, and second, if the requirements are not met, whether the removal of the appellant from the UK is disproportionate. No separate Article 3 claim is advanced either on health grounds or relating to the risk of suicide.
4. Mr Rashid said that the Tribunal would hear evidence from the appellant’s daughter and son-in-law. They gave evidence with the assistance of an interpreter that had been arranged by the Tribunal to interpret the Mirpuri and English languages, in accordance with the Tribunal’s directions dated 12 October 2021. After we had finished hearing the evidence of Mr Arshad Hussain and Mrs Shahnaz Begum on 3 March 2022, Mr Rashid, upon instructions, submitted that there was some concern as to whether Mrs Shahnaz Begum and the interpreter were properly able to communicate because of the dialect spoken by the

interpreter, who was not from Kashmir. Although Mrs Shahnaz Begum had not raised any concerns when she was giving evidence, Mr Rashid submitted that a Mirpuri (Kashmiri) interpreter was required, and that Mrs Shahnaz Begum had in fact given some of her answers to the interpreter in Urdu, and that was not her first language. Although we had established that the interpreter and Mrs Begum understood each other before she began giving evidence and it appeared to us that they understood each other, in fairness to the appellant we agreed to adjourn the hearing, part-heard, so that Mrs Shahnaz Begum could give her evidence again, with the assistance of a Mirpuri interpreter, using the Kashmiri dialect. The appeal was adjourned part heard until 17 March 2022.

5. The evidence before the Tribunal is set out in the following bundles:
 - a. An appellant's bundle comprising of 334 pages sent on 7 October 2021 (the same as that previously sent on 4 February 2020)
 - b. An appellant's supplementary bundle comprising of pages 335-434 sent on 5 October 2021
 - c. A copy of a letter dated 4 November 2021 from Birmingham and Solihull NHS Mental Health team addressed to the appellant's GP
 - d. A letter dated 15 November 2021 from Mohammad Yaqub Choudhery
 - e. The respondent's bundle comprising of 98 pages.
 - f. Addendum witness statements of Mr Arshad Hussain dated 26 October 2021 and Mrs Shahnaz Begum dated 28 October 2020.

6. As regards the letter from Mr Choudhery, Mr Rashid informed us that Mr Choudhery was not being called to give evidence, and the appellant does not rely upon Mr Choudhery as an expert witness. He said Mr Choudhery writes as a family friend of Mr Hussain rather than in a professional capacity and is not offering a professional opinion. Mr Rashid was unable

to provide us with any information regarding the qualifications and experience of Mr Choudhery beyond what was set out in the letter.

Remaking the decision

7. 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 us 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

8. The appellant was not called to give evidence before us. There is no expert evidence before us to indicate that she is unable to give evidence although when we tried to introduce ourselves to her on 3 March 2022 with the assistance of the Mirpuri interpreter she did not respond at all, even to confirm she understood the interpreter. Mr Rashid confirmed that we would hear oral evidence from the appellant's daughter and son-in-law only.

The appellant's case in summary

9. The appellant claims she now lives in the UK with her daughter, Shahnaz Begum, her son-in-law Mr Arshad Hussain and their two children. Previously, the appellant resided with her husband, Mr Abdul Rahman, in Pakistan for many years after her children relocated to the UK. The appellant visited her children several times. Following the death of her husband on 29 January 2019, the appellant intended to visit the UK and return to Pakistan after that visit. She came to the UK, accompanied by her son Mr Ali. However, the loss of her husband had a deep impact on her and once in the UK, her health deteriorated. The appellant claims she is now frail, tearful, forgetful and lonely, and has mental health

issues such that she now requires 24-hour care and supervision. She claims she requires help with dressing, bathing, cooking, walking, social interaction and administering medication. She claims that if returned to Pakistan, she would have insufficient support and would not be able to care for herself.

Mr Arshad Hussain

10. Mr Arshad Hussain was content to speak via the Mirpuri interpreter that attended on 3 March 2022 and no concerns have been raised regarding his ability to communicate with the interpreter.
11. Mr Hussain adopted his witness statements dated 28 January 2020 and 26 October 2021. The statements are not endorsed with a 'certificate of translation' identifying the individual that had translated the content of the statement to Mr Hussain, but he confirmed the statements had been read to him by his solicitor in a language he understood, and he recalled signing them.
12. In cross-examination Mr Hussain confirmed that besides the evidence from the GP that has been provided, there is nothing to confirm the medication that is currently prescribed to the appellant. He said they give the appellant her medication, but he could not remember the name of it. He said they pay for the medication, being the prescription charge at the pharmacy. He said the appellant has no other children living in Pakistan. His father in law's name was Abdul Rahman; the son who reported the father-in-law's death (Mr Ali) lives in Rochdale; he could not remember if Mr Ali was in Pakistan at the time his father-in-law passed away, although he thinks his father-in-law was ill when Mr Ali was there.
13. When asked whether he helped arrange for Dr Nadim Siddiqui, a Chartered Psychologist to assess the appellant, Mr Hussain said that at the time the appellant's son, Mr Mozam Ali was helping look after the appellant. He was not sure if Mr Ali had made the arrangements for the

assessment but thought there might have been some discussion between them. He could not recall whether the appellant saw Dr Siddiqui once or several times.

14. Mr Williams referred Mr Hussain to the report of Dr Nadim Siddiqui, which is to be found at page 53 of the appellant's bundle. At page 56, under the heading 'Treatment Recommendation' it is said that Dr Siddiqui is of the clinical opinion that the appellant will benefit from at least 12 sessions of trauma focused cognitive behaviour therapy ("CBT"). Mr Hussain was asked whether the appellant had had that CBT. He said she had, and it was undertaken when it had been recommended. When asked when, he said that the appellant had been taken by her son but accepted that there was no evidence of that. As to whether the CBT was through the NHS, he said that he was not sure because at the time, the appellant was in Rochdale.
15. Mr Hussain was referred to his 'Addendum Statement' dated 26 October 2021 in which he referred, at paragraph [7] to the care available in Pakistan. He confirmed he had not visited any care homes in Pakistan and neither had his wife. He said that they had not researched the availability of professional care nor advertised for professional carers in Pakistan. He said that the appellant was OK when she was in Pakistan and the death of his father-in-law had only taken place shortly before the appellant came to the UK on a visitor Visa. He said that they had asked friends they know in Pakistan about care and accommodation and had been told that they could find someone to look after the appellant for two to four hours each day, but there would be no one available to care for the appellant overnight.
16. Mr Hussain said that he could not recall how often he visited the appellant in Pakistan. He accepted that there was an 'exit' stamp in his passport which showed that he left Pakistan on 16 January 2019, twelve days before the death of his father-in-law. He confirmed that he probably

saw the appellant when he was in Pakistan at that time, and she did not have any mobility or mental health issues at that time. His mother and father-in-law were not receiving any help and took care of all the housework themselves. Mr Hussain said that he and his wife sent money to his mother and father-in-law after his wife joined him in the UK. He could not remember how much they sent.

17. Mr Hussain said that when the appellant first came to the United Kingdom she lived with him and his wife, and after the appellant's son returned to the UK , the appellant initially spent her time between Rochdale and Birmingham. She was able to travel between her children because she was not as frail at the time. He said that since the Covid pandemic, the appellant has largely lived with him and his wife. She was not being cared for carefully by her son in Rochdale, and so she now permanently lived with Mr Hussain and his wife, although she occasionally visited her son in Rochdale.
18. As to the appellant's health when she was in Pakistan, Mr Hussain said the appellant is an elderly person and so she took some general medication in Pakistan. He said that generally, everyone over the age of 40 takes medication in Pakistan because there is a lot of illness.
19. Mr Hussain said he has two sons and three daughters; his sons are aged 21 and 30 and his daughters are aged 28, 26 and 24 approximately. He said he has two businesses; one concerns properties they rent out and receive income from, the other is a grocery business. Asked why his wife could not go and live in Pakistan with the appellant, he said that they have a business and family in the UK, but in Pakistan they have nothing.

Mrs Shahnaz Begum

20. As we have already noted, after Mrs Begum gave evidence on 3 March 2022, concerns were raised as to whether she had fully understood the interpreter. Her evidence was therefore retaken afresh at the reconvened

hearing on 17 March 2022 with the assistance of an interpreter who spoke Mirpuri (Kashmiri dialect) and whom Mrs Shahnaz Begum confirmed she fully understood. Mrs Begum adopted her witness statements dated 28 January 2020 and 28 October 2020. Again, we noted they were written in English with no certificate of translation and the solicitors had not provided her with copies in any language other than English, despite her not being conversant in English. Although Mrs Begum could not read the statements, she confirmed that she remembered making the statements and they had been read to her in a language she understood before she signed them.

21. In response to questions asked by us as to the circumstances in which the statements were made, Mrs Begum explained that when she made her witness statements, there were only two other people in the room. One was her solicitor, and the other was someone that she did not know. She maintained that her husband had not been in the room when she made her statement and she had not been present when her husband made his statements; they were both seen individually. She said that the solicitor asked questions which she answered; it was put together as a statement that was then read back to her before she signed it. She said that both of her statements recorded the words that she had used when answering the questions asked by the solicitor. We pointed out to her that her statement dated 28th January 2020 comprises of 18 paragraphs and her husband's statement of the same date also comprises of 18 paragraphs. We also pointed out to her that her 'addendum statement' dated 28th October 2020 comprises of 9 paragraphs and her husband's 'addendum statement' dated 26th October 2021 also comprises of 9 paragraphs. We asked her whether it was simply a co-incidence that the two statements are almost identical. She responded that she and her husband knew the same things and so she did not think that to be surprising. She was unable to explain why both statements use identical language or how the evidence of both her and her husband came to be set out in the same number of paragraphs in the same order. She said

she cannot read or write English except she can write her name. Her solicitor had put the witness statements together. They had both spoken to the same solicitor on the same day, albeit separately.

22. In cross-examination she was asked why she could not go to Pakistan to provide her mother with the care that she currently provides in the UK. Mrs Begum said that her children live in the UK and there is no one she could live with in Pakistan. She confirmed her youngest child is now aged 21 and she wants to live with her children. She was asked whether they have looked at care homes in Pakistan, and she said that they had, but there is nothing near where the appellant lived in Pakistan, and she has heard the care homes in Pakistan are no good. She confirmed she has not visited any and has not tried to find anyone who could care for her mother locally in Pakistan.
23. Mrs Begum was asked about the report of Dr Siddiqui. She initially said that she did not know who he was. She could not remember when Dr Siddiqui was asked to provide the report, but said her mother went once, but did not want to go again. She was not sure whether it was her husband or her brother who took her mother to see the doctor. When asked whether she had seen the report of Dr Siddiqui, she said that she could not remember, but she does not speak English. Mr Williams pointed out that Dr Siddiqui has recommended talking therapy, and asked Mrs Begum whether her mother has received any therapy. She said that she went once and did not want to go again. That was with Dr Siddiqui, about two years ago. When asked whether her mother has had any other treatment, Mrs Begum said that she did “go to another place but did not go back there either”. That was to talk to people to make her feel better. She said that somebody had told her brother to send her mother there.
24. Mrs Begum said that the appellant used to live with her son (i.e. Mrs Begum’s brother) when she first arrived in the UK, and she now lives with Mrs Begum and her husband, and sometimes visits the brother. She confirmed that her mother does not have any diagnosed physical health

problems and did not have any mobility problems when she previously lived in Pakistan. She confirmed that her mother takes a tablet daily for depression and has some medication because she breathes too quickly, that she takes about three times a week. With the medication there has been some improvement. When asked how her mother communicates with her grandchildren, she said that she communicates in the same language as she speaks, Mirpuri. When asked when her mother had stopped talking, Mrs Begum said that her mother does talk to her and her children, but sometimes she just won't talk. She does not know why.

25. In re-examination, Mrs Begum said that she had not been able to read her statements because she does not read English. The statements were put together by the solicitor. Both Mrs Begum and her husband had attended the solicitor's office on the same day and although the statements are almost identical in paragraph [8] of her statement dated 28th January 2018 she has provided additional information about her brother's visit to Pakistan for their father's funeral, and the reasons for her mother coming to the UK. Mr Rashid reminded Mrs Begum that she had said that her mother has no diagnosed physical health problems and asked her what mobility problems her mother has. Mrs Begum said that she bathes, feeds and clothes her mother and that she now takes her around a little in the garden. She said that her mother would be unable to do those things alone in Pakistan because there is nothing she can do for herself, she doesn't have the strength. Mr Rashid asked the appellant whether she has made any enquiries about a carer or someone that may be able to live with her mother in Pakistan. Mrs Begum said that she has made some enquiries, and someone could stay for a few hours, but she is able to provide her mother with care day and night. Mr Rashid asked whether the appellant could make do with someone looking after her for 2 to 3 hours a day. Mrs Begum said that would not work. The care home facilities she has made enquiries about is very far and she did not want to put her mother in that care home. She said that her father has passed away and she does not know how long her mother will be around.

Submissions

26. The parties' submissions are a matter of record and there is little to be gained by us setting out the submissions at length in this decision.
27. Broadly stated, Mr Williams relied on the Refusal Letter and referred to the respondent's skeleton argument. He referred to the preserved findings and submitted that the requirements for leave to remain on family or private life grounds set out in the immigration rules are not met and the refusal of leave to remain is not disproportionate. He said there is no evidence of any GP visits in the last two years. He submitted the expert evidence from Mr Siddiqui is not impartial as he makes reference to it being unreasonable to expect family members to break from their work and family life to return to Pakistan to support the appellant. He submitted that is beyond the scope of the expertise of a psychologist and is an assessment for the Tribunal to make. The evidence of therapy sessions attended is unclear and indicates the appellant's mental state is not as bad as claimed, if the family are not following the doctor's recommendations for treatment. He submitted there is no diagnosis of dementia. Mr Williams submitted Mr Choudhery's letter cannot be relied upon as it is unclear in what capacity he has written the letter; he does not identify any assessments undertaken and it does not follow from his stated experience, that he has the necessary qualifications to diagnose dementia. Mr Williams submitted that even if the appellant has mental health conditions, there is no evidence to say she cannot obtain treatment in Pakistan. As regards care in Pakistan, he submitted that any obstacles could be overcome by the appellant's daughter returning with her. Her daughter's children are adults, the family business is a passive one focussed on rental properties, and she does not play any active part. There is no evidence that the absence of Mrs Shahnaz Begum from the UK would be to the detriment of her family or their financial position. He referred to Rubeli v ECO [2018] EWCA Civ 611 in which it was found as a matter of common sense that the daughter could accompany her mother back to her country of origin. It is, Mr Williams submitted, a matter of

choice. He submitted that in terms of the Article 8 balancing exercise, the appellant entered the UK with a visit visa and her immigration status has always been precarious. She could have had no legitimate expectation of remaining in the UK. Her inability to speak English is a neutral factor due to her age, but there has been reliance on NHS treatment which is only likely to increase.

28. Mr Rashid relied on his skeleton argument. As regards paragraph 276ADE of the rules, he referred to the test in Kamara and said the appellant is aged 74. It is not disputed that she has spent most of her life in Pakistan, and the preserved findings are that she does have property and neighbours there. However, those findings were made two years ago in March 2020, and the appellant's daughter has said there is nobody there at present. Mr Rashid submitted the appellant requires round the clock care, not just for a few hours. He referred to the letter dated 4 November 2021 from Verona Reed to the appellant's GP discussing an assessment by Birmingham and Solihull Mental Health Trust. Under the heading 'mental state examination' it states "ADL- needs 24-hour care with all her care needs IQcode-5". We invited Mr Rashid to explain what the acronym 'ADL' refers to, and what 'IQcode-5' is. Mr Rashid said he did not know what the medical terminology or acronyms meant and could not provide us with any information regarding the qualifications of the author beyond the author of letter being referred to as a 'CPN' which, he understands, means Community Psychiatric Nurse. He also referred to the letter from Mr Choudhery in which he has suggested "four pillar support" for the appellant. Mr Rashid accepted however that Mr Choudhery is not an impartial witness as he has been a family friend for ten years. He said Dr Siddiqui's report opines that the appellant's mental health is impaired and the letter from the NHS also confirms she is suffering from mental health concerns due to low mood etc. He submitted there would be very significant obstacles to her integration in Pakistan as the oral evidence is that she can no longer do anything for herself. Dr Siddiqui says she has a clear impairment in day-to-day functioning requiring 24-hour supervision which is not available in

Pakistan and can only be provided by the appellant's daughter. Mr Rashid submitted it would not be reasonable to expect the appellant's daughter, who is a British Citizen, to live with the appellant in Pakistan, as this would break her own family apart, including affecting her children who, although adults, still live at home and have not formed independent lives. He also relied on these reasons to submit the refusal of leave to remain would be a disproportionate interference with family life under Article 8.

Findings and conclusions

29. In reaching our decision we have had regard to all the evidence before us, whether or not it is referred to. We have had the opportunity of hearing the appellant's daughter and son-in-law give evidence and seeing their evidence tested in cross-examination. We have also had the opportunity of reading through the report of Dr Nadim Siddiqui, and the letters that are relied upon by the appellant from the Birmingham and Solihull Mental Health Team, and Mr Mohammad Choudhery. In considering the oral evidence, we have borne in mind the fact that events that occurred some time ago can impact on an individual's ability to recall exact circumstances. We 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. We also remind ourselves 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. We have also been careful not to find any part of the account relied upon, to be inherently incredible, because of our own views on what is or is not plausible.
30. There is a preserved finding that the appellant has lived with her son and daughter in the UK, who are both British Citizens, since her arrival in this

country in February 2019 following the death of her husband in January 2019. We find the appellant enjoys family life with them and Article 8 is plainly engaged. We find that the decision to refuse the appellant leave to remain has consequences of such gravity as to engage the operation of Article 8. We 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.

31. 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.
32. Mr Rashid submits the appellant satisfies the requirements of paragraph 276ADE(1)(vi) of the immigration rules. That is, she is aged 18 years or above, has lived continuously in the UK for less than 20 years, but there would be very significant obstacles to the appellant's integration into the country to which she would have to go if required to leave the UK.
33. We have already referred in paragraph [2] of this decision to the preserved findings of the First-tier Tribunal Judge. There are preserved findings that the appellant and her husband had made separate visits to the UK prior to his death, the appellant has a house and land in Pakistan,

the appellant has friends and neighbours in Pakistan, the appellant could access the health service in Pakistan and that the appellant's family in the UK would assist her from the UK to ensure that she is looked after to the best of their abilities.

34. We reject the submission made by Mr Rashid that we should go behind the preserved findings because the findings were made two years ago in March 2020, and the appellant's daughter has said there is nobody there at present. The submission is misconceived when there is no evidence before us that even begins to undermine those findings. The evidence of Shanaz Begum that she cannot live in Pakistan because "there is no-one there" was given in cross examination. She was asked by Mr Williams why she could not go to Pakistan to care for the appellant. Shahnaz Begum replied: *"I can't live there. I have my children here and there is no-one there so I cannot live there"*. We can well understand that Shahnaz Begum may not wish to go and live in Pakistan because "there is no-one there", in circumstances where her own family would remain in the UK, but that does not undermine any of the findings made previously and preserved. Although the appellant has been in the UK since her arrival in February 2019, when she entered the UK as a visitor, it must always have been her intention that her stay in the UK would not exceed the permitted length of stay, and that she would leave the UK at the end of the visit. The simple passage of time does not, without more, undermine the findings that are preserved.
35. We have two copies of a report prepared by Dr Nadim Siddiqui. The first appears in the appellant's bundle comprising of 334 pages and the second appears in the supplementary bundle and is described as a 'Corrected Psychological Report'. Neither party drew our attention to any 'corrections' that were made by Dr Siddiqui. Both reports follow an assessment completed by Dr Siddiqui on 25th May 2019 in the presence of the appellant's son in law. The respondent does not challenge Dr Siddiqui's qualifications or experience and we accept that he has the

necessary qualifications and experience to provide an expert opinion as to the appellant's mental state.

36. At [1.1], Dr Siddiqui sets out his clinical opinion following diagnoses and a structured clinical examination of symptomology and psychometric testing. He states the appellant's psychological conditions are of very serious concern to the psychological assessor, in that the appellant is a vulnerable individual. He states the appellant gave a credible account of herself with no evidence of fabrication, embellishment or exaggeration. Dr Siddiqui is of the opinion that the appellant displays psychological symptoms that are commensurate with her being an individual who is vulnerable and dependent on close family support. He states she does not want cognitive behavioural therapy (CBT) to alleviate her symptoms and does not want to use anxiolytic or anti-depressive medication. He states she presents as a victim of current psychological trauma due to the prospect of forcible return to Pakistan and she has the capacity to perceive that she is unable to look after herself on her own, in the UK or in Pakistan. Dr Siddiqui expresses the opinion that a forcible return to Pakistan will trigger further intense negative cognitive, emotional, physiological and behavioural symptoms, because her family life, financial, physical, psychological and physiological support structures are clearly in the UK, not in her country of birth. He expresses the opinion that remote means of contact could not provide the level of support the appellant clearly requires in day-to-day living. In his view, it is in the best interests of the family, for them to stay together as an integral family unit.
37. In section 1.3 of his report Dr Siddiqui has diagnosed that the appellant suffers from moderately severe depression that is 100% attributable to the index incident. He states that the appellant has severe generalised anxiety that is again 100% attributable to the index incident. She is said to have high emotional symptoms and suffers from post-traumatic stress disorder, sufficient to warrant a diagnosis of PTSD. He states, *"The PTSD is 100% attributable to the trauma of being removed from family support*

that Qurban Begum is wholly dependent on, and the moves to remove her from the UK are stressor (sic) inextricably linked with removal..”. Dr Siddiqui states the appellant does not suffer from specific phobias but does display some suicidal ideation that will probably subside if not forced to return to Pakistan. He states: *“Qurban Begum has clear impairment in day-to-day functioning, requiring 24-hour supervision..”*.

38. In section 1.2 of his report, Dr Siddiqui notes the appellant does not want psychological treatment for her symptoms. He is of the opinion that it would be beneficial for her to be in receipt of at least 12 sessions of trauma-focused CBT by expert practitioners. He states the appellant does not wish to have the CBT treatment because she sees her main current issues as problems stemming; (i) from potential separation from her current UK family life; and (ii) separation from close quarters day-to-day (24/7) family support necessitated by her mental and physical dependency. He says the source of her problems is not treatable by psychological therapy alone, and that close proximity to family life and day to day support are essential, likely to account for *‘at least 80% variance in this case’*. He later says, at [6.0] that *“Therapy is not essential, as her symptoms will subside on their own, if the client is in a stable and supportive environment (i.e. close to family and support in the UK)”*.
39. Dr Siddiqui states that if available, a British Psychological Society Chartered Practitioner Psychologist (CPsychol) who is Health Care Professions Council (HCPC) registered and significantly experienced in the treatment of psychological trauma, should provide the treatment if the appellant agrees. A chartered psychologist also experienced in eye movement desensitisation and reprocessing, as well as trauma-focused CBT therapy would be essential for treatment. Dr Siddiqui states: *“The EMDR Institute (a regulatory body) does not contain any qualified clinician entries for Pakistan. It is highly unlikely that adequate treatment would be available in Qurban Begum’s previous home country. The treatment is readily available in the UK, usually with a waiting list for*

therapy on the NHS". As to the prognosis, Dr Siddiqui expresses the opinion that the appellant should make an estimated 75% recovery of identified symptoms by the end of the recommended therapy in the UK, if the appellant had close family support in the UK. He states that "... Availability of suitable therapy in their home country is exceptionally unlikely, to the point of being a unrealistic expectation, especially given her vulnerability.". Dr Siddiqui goes on to say that the appellant "... is a highly vulnerable person, with no means of adequate life-support or for adequate treatment in Pakistan. Her family network is here in the UK, centred around Birmingham and Rochdale."

40. At paragraph 2.2 of his report, Dr Siddiqui states that the appellant does not appear to have overt physical injuries, but he was told and observed himself, that the appellant is not reliably mobile beyond a very short distance. He states the appellant is incapable of reliably administering medication herself due to reduced cognitive capacity and her impaired mental state.
41. We have several concerns about the way in which the report of Dr Siddiqui has been prepared, the information that was made available to him and that he relied upon, and his analysis, which impacts upon the weight we attach to the conclusions that he expresses.
 - a. Dr Siddiqui confirms that, in the preparation of his report, the only documentation that he had sight of was "*A letter/email of instruction from instructing party identified on the cover page of this report.*". The cover page to his report identifies that he received instructions from 'GetAMedical.com'. Dr Siddiqui fails to set out the scope of his instructions and the written instructions that he received. He has clearly not had sight of the appellant's medical records, either from Pakistan or the UK. Dr Siddiqui has relied upon, and accepted, what he has been told by the appellant and her family.

- a. Dr Siddiqi sets out at section 2.1 'What happened'. He does not identify where that information came from. He does not say whether that information was provided to him by the appellant, her son-in-law or indeed someone else.

- b. At paragraph 2.1(4), Dr Siddiqi states "*The passing of the husband had a devastating effect beyond what might be expected from bereavement as Qurban Begum was wholly reliant on her husband for day to day living support as well as emotional support. This reliance developed due to her limited mental capacity to support herself in day-to-day living (as well as emotional help)*". Although the death of her husband is likely to have had a devastating account upon the appellant, there is no evidence before us that the appellant was wholly reliant on her husband due to her limited mental capacity to support herself. In fact, based upon evidence given by the appellant's daughter and son-in-law before the First-tier Tribunal, there is a preserved finding that the appellant made previous visits to the UK alone, and her husband made separate visits to the UK, on his own, prior to his death, during which the appellant remained in Pakistan. The evidence of the appellant's daughter and son-in-law at paragraph [7] of their statements dated 28th January 2020, is that it was their intention that the appellant would return to Pakistan after her visit, as she had done on many occasions previously. They say in paragraph [8] of their statements that the situation and circumstances changed after her arrival in the UK. The evidence of the appellant's daughter and son-in-law before us was that the appellant had no mobility issues prior to leaving Pakistan and that the appellant and her husband did things like housework together. Therefore, the opinions expressed by Dr Siddiqi are based upon a flawed understanding of the material background.

- c. It is unfortunate that Dr Siddiqui did not have access to the appellant's GP records. We have been provided with a copy of the appellant's GP records printed on 13th January 2020. There is an entry in the records dated 29th August 2019 of a mild depressive episode. The entry states "*.. Low mood not sleeping, not communicative used to be active lives alone in Pakistan and had been subject to several burglaries and has no family support there now living here has a hx of depression and was treated previously..*" Dr Siddiqui was plainly unaware that the appellant 'used to be active' and 'had been subject to several burglaries', rather than reliant upon her husband.
- d. We note that at page 20 of his report, under the heading 'Speech' Dr Siddiqui states the appellant "*..communicated very poorly in English and slightly better in Urdu, but then only with supportive family members*". It is perhaps unsurprising that the appellant "communicated very poorly in English", and it appears that no arrangements were made for an independent interpreter to assist. We also note the concerns that were raised before us at the hearing on 3rd March 2022, when it was suggested that some of the responses of Mrs Shahnaz Begum, the appellant's daughter may have been misunderstood because, at times, she was conversing with the interpreter in 'Urdu', rather than Mirpuri (Kashmiri dialect).
- e. Dr Siddiqui goes on to say that there were clear issues of latency of response and significant hesitation which he says is possibly indicative of cognitive or verbal processing impairment. That may be so but could equally have been due to an inability to understand the language being used, which may also explain why she '*struggled to recount or demonstrate awareness*' of how she got to the interview.

- f. In his report, Dr Siddiqui states the appellant “..does suffer from PTSD type symptoms (emotional distress) and they do meet criteria for fully diagnosable PTSD if one considers the stressor to be separation from (life dependent) family support (our emphasis)”. It is unclear why Dr Siddiqui believes the appellant requires ‘life dependent family support’. Dr Siddiqui refers to the ‘DSM-V criteria for post traumatic stress disorder. The criteria require a ‘stressor’ and requires that the person must have been exposed to actual or threatened death, serious injury, or sexual violence in one (or more) of four identified ways. Here, Dr Siddiqui states that criterion A is met because the appellant has been ‘exposed to actual or threatened serious injury’ by ‘direct exposure’. That is, directly experiencing the traumatic event. Dr Siddiqui carried out his assessment on 24 May 2019. The appellant made her application for leave to remain on 23 July 2019, two months after the assessment. Quite apart from the fact that we do not accept without further explanation that a refusal of leave to remain or steps taken to remove an individual from the UK amounts to “actual or threatened serious injury”, it is difficult to see how Dr Siddiqui could rationally conclude that the appellant had been directly exposed to ‘actual or threatened serious injury’ at a time when the appellant had valid entry clearance and even before she had made her application for leave to remain, and a decision was reached by the respondent. The reference by Dr Siddiqui to his diagnosis being ‘100% attributable to the trauma of being removed from family support that the appellant is wholly dependent on, and the on-going moves to remove her from the UK’, is entirely misconceived. The appellant had lawfully entered the UK and at the time of Dr Siddiqui’s assessment there were no ongoing moves to remove the appellant from the UK.

- g. Dr Siddiqui states that 'Depression was assessed using clinical judgment aided by the Patient Health Questionnaire (PHQ-9)'. That is said to be the "nine item depression scale of the larger Patient Health Questionnaire". The way in which the Patient Health Questionnaire was completed is neither set out nor apparent from the report in circumstances where the appellant does not read or write English. There is no clarity about the process by which the assessment was completed, and we cannot be satisfied that any questions answered were provided by the appellant herself in response to a document written in the appellant's own language, or had been translated to her independently in a language that she properly understood.
- h. Dr Siddiqui refers to the need for treatment by a Chartered Psychologist that is also qualified and experienced in 'Eye Movement Desensitisation Reprocessing (EMDR)' as well as trauma-focused CBT therapy. He states the EMDR Institute (a regulatory body) does not contain any qualified clinical entries for Pakistan. He states it is 'highly unlikely' that adequate treatment would be available in Pakistan. Dr Siddiqui is not a country expert, and he does not disclose the basis upon which he has the necessary qualifications, experience and knowledge of the availability of mental health treatment in Pakistan, to conclude that it is highly unlikely that adequate treatment would be available in Pakistan. The fact that the EMDR Institute may not list any qualified clinical entries for Pakistan, is not to say that treatment would not be available in Pakistan. As Dr Siddiqui himself stated, EMDR is only one part of the treatment and would only be possible if the appellant agreed to it. 80% of the variance in the appellant's case (which we take to mean a positive change in outcome) would come from family support, not therapy. The appellant has had the opportunity of having

treatment in the UK, but has chosen not to engage in, and continue with, treatment.

- i. Dr Siddiqui's observations of the appellant and her mobility are based upon a single assessment on 24 May 2019. His opinions are not based on observing her behaviour over a period of time or over several sessions. His observations regarding the appellant's mobility and her capacity to do daily tasks, are therefore based largely on what he was told, rather than what he observed for himself. He does not refer to any assessment completed to determine the extent to which the appellant requires support with actual daily living, or the extent to which the appellant can undertake tasks such as cooking, feeding, bathing and clothing herself.
- j. Dr Siddiqui's opinion that the appellant requires 24-hour supervision is based upon a 'Mini Mental State Examination (MMSE)', to reveal any underlying cognitive impairment. She is said in the box that appears at page 22 of the report to have scored 7/30. However, immediately below it is said that that she scored 13/30. The distinction is important. A score of 0-10 demonstrates 'significant impairment' indicating the patient is *"likely to require 24-hour supervision and assistance with ADL"*. A score of 10-20 demonstrates 'moderate impairment' indicating the patient *"may require 24-hour supervision"*. Dr Begum states that in his clinical opinion the appellant does require 24-hour supervision, and then states the appellant *"..needs 24-hour supervision and extensive Assistance with Daily Living."* but crucially, fails to explain why the appellant is 'likely' or indeed 'may' require 24-hour supervision and the nature of any assistance that she requires with actual daily living.

- k. Dr Siddiqui emphasises that the appellant must stay in the UK in order to have the necessary support structure. He fails to have any regard to the way in which the appellant was able to live and support herself in Pakistan previously and the support structures that would still be available to her in Pakistan.

42. Mr Arshad Hussain and Mrs Shahzana Begum have provided witness statements that are near-identical in terms of length and content. In their witness statements dating from January 2020, paragraphs 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17 and 18 are identical save that Mr Hussain refers to his 'mother-in-law' whereas Mrs Shahnaz Begum refers to her 'mother'. The first part of paragraph 8 is identical save that Mrs Begum adds "*My brother visited Pakistan for my father's funeral and as my mother had a valid visit visa for the UK, he thought it would best [sic] to bring her with him to the UK so that she can be supported, comforted and so that we can mourn as a family, as I was unable to travel to Pakistan when my father sadly passed away*". Paragraph [15] is the same save that Mrs Begum refers to the appellant's medication being administered via her 'Dossett box' whereas Mr Hussain simply refers to administering medication.
43. In their most recent statements of October 2021 paragraphs 2, 3, 6, 7, 8 and 9 are identical save that Mr Hussain again refers to his 'mother-in-law' and Mrs Shahnaz Begum refers to her 'mother'. Paragraphs [4] and [5] are also very similar save that Mrs Shahnaz Begum describes the care she personally gives to her mother whereas Mr Hussain says the same things about the care but refers to his wife providing that care.
44. Mrs Begum could not explain why the statements were so similar. We find it extremely unlikely that on two separate occasions, over 18 months apart, both Mr Hussain and Mrs Begum used exactly the same words in answering questions put to them separately by their solicitor. We cannot be satisfied that the witness statements are an accurate record of their own evidence. The statements are written in English and are not endorsed with a certificate of translation identifying the individual that

read the content of the statement to them before the statements were signed, and the language used. Neither Mr Ahmed nor Mrs Begum were provided with a copy of their statement in a language that that they can read, despite them not being conversant in English. As such, we treat the content of those statements with some caution. We have had the opportunity of hearing from the appellant's daughter and son-in-law. We say at the outset that we found neither Mr Hussain nor Mrs Shahnaz Begum to be impressive witnesses. Their oral evidence before us was vague and inconsistent and they failed to answer straightforward questions put to them. We find that throughout their evidence they have sought to embellish their evidence so as to give the impression that the appellant requires care and support that only her family in the UK can provide.

- a. We found Mr Arshad Hussain to be very vague in his evidence regarding the report of Dr Siddiqui. We note Dr Siddiqui says that the appellant was accompanied on 24 May 2019 by her son-in-law. Dr Siddiqui is based in Oldham. Mr Hussain lives in Birmingham. In cross-examination, Mr Hussain was unable to say whether he or his brother-in-law (i.e. the appellant's son) had arranged for the assessment by Dr Siddiqui and could not say whether the appellant had been seen by Dr Siddiqui on more than one occasion. In cross-examination Mr Hussain was referred to the recommendation made by Dr Siddiqui that the appellant would benefit from at least 12 sessions of trauma focused CBT. He was asked whether she has had that CBT. He said "yes", and that the CBT was completed after it was recommended. He said that the appellant's son had taken her. He claimed that at the time, the appellant was living in Rochdale, and he was not sure whether the CBT had been arranged through the NHS or privately. Although Mr Hussain's evidence is that the appellant has received the CBT recommended, there is no evidence of that before us despite the passage of time since the recommendation was made. It is in our judgment surprising that having taken the appellant for an assessment by Dr Siddiqui, Mr

Ahmed would not know of the practical arrangements that had been made to follow through with the recommendations of Dr Siddiqui.

- b. We found Mrs Shahnaz Begum to be equally vague in her evidence regarding the report of Dr Siddiqui. When she was first asked about the report of Dr Siddiqui, she asked "*who is he?*". Her evidence was that the report had been arranged by her husband but when it was pointed out to her that her husband was not sure whether it was him or his brother-in-law that arranged for the report, she said that she was not sure whether it was her husband or her brother who had taken the appellant to see Dr Siddiqui.
- c. In any event, Mr Hussain's evidence is that the appellant has received CBT. His evidence is at odds with the evidence of Mrs Begum who said in cross examination that the appellant had attended one session of talking therapy but had not returned.
- d. The appellant arrived in the UK on 11 February 2019. Their evidence is that prior to her arrival in the UK, the appellant had no problems with her mobility and although she was "ill now and again", she had no significant health concerns. Their evidence is that following the appellant's arrival in the UK, her health deteriorated. They say in their witness statements they sought legal advice and realised they required supporting evidence for any future application. They went about obtaining the supporting evidence and submitted the same in support of the appellant's application for leave to remain. Mr Hussain appears to have accompanied the appellant when she was assessed by Dr Siddiqui. As we have already noted, Dr Siddiqui was led to believe that the appellant was wholly reliant on her husband for day to day living support as well as emotional support and that reliance developed due to her limited mental capacity to support herself in day-to-day living. We find that the appellant's previous reliance upon her late

- husband was embellished in a misguided attempt to exaggerate the appellant's dependence on others.
- e. Despite the appellant's apparent frailty and need for constant supervision in a settled environment, the evidence of Mr Hussain and Mrs Begum was that when she was seen by Dr Siddiqui the appellant was still travelling and living between her daughter's home in Birmingham and her son's home in Rochdale. The evidence of Mr Hussain was that she was able to do that because "she wasn't that frail then". The evidence of Mrs Begum was that although the appellant's permanent home is now in Birmingham, she continues to visit and stay with her son, albeit that was not possible during the Covid-19 pandemic. Neither Mr Hussain nor Mrs Begum were able to explain when the appellant moved in to live with them permanently, or how the appellant was able live between her address in Birmingham and her son's address in Rochdale if she is as frail and unwell and requires the care and supervision that they claim.
- f. Dr Siddiqui states anti-depressive medication may help the appellant but that she did not want to take it. Mr Hussain's oral evidence was that the appellant takes 'the doctor's medication', but he didn't know what it was, saying his wife would know. Mrs Shahnaz Begum said at the hearing that the appellant takes one tablet for depression each day and that she took other medication for breathing problems. In her witness statement of 28 January 2020 Mrs Begum refers, at para [15], to the appellant needing help administering medication "via her dosset box", suggesting she takes several medications. However, looking at the GP records provided, Dr S N Clay & Partners prescribed sertraline 100mg tablets on 20 October 2019, with a further repeat prescription on 6 January 2020. The only other medication mentioned in the GP records is Peptac liquid peppermint prescribed on 6 January 2020 for acid reflux. There is no evidence in the GP records of any medication for breathing problems. The records only go up to 6

January 2020. They are now two years out of date, and we do not have a current picture as to the appellant's state of health from her GP. In her evidence before us Mrs Begum said that although the medication for the appellant's breathing problems was previously taken daily, she now takes the medications three times each week. The limited medication that the appellant is prescribed does not in our judgment establish that the appellant requires anything more than very limited support to ensure that the medication is administered.

- g. It is clear from Dr Siddiqi's report that the appellant spoke to him at the assessment which took place on 24 May 2019. There is a letter from Clarendon Medical Centre dated 1 June 2019 which refers to the appellant coming to see the author on 29 May 2019 and telling him of her circumstances. The letter from Verona Reed dated 4 November 2021 says "*Behaviour -she did not engage in the assessment, no communication despite prompts from her daughter and son in law. She sat with her head low, face covered throughout the assessment.*". The appellant did not give evidence before us and when the interpreter tried to communicate with her on 3 March 2022 the appellant did not respond at all to the interpreter. When asked in cross examination how the appellant communicates, Mrs Shahnaz Begum said the appellant does speak, she speaks to her grandchildren in Mirpuri. We find the appellant can speak but chooses not to in certain circumstances.
- h. In paragraph [8] of their witness statement, Mr Ahmed and Mrs Begum refer to the appellant's circumstances changing after her arrival in the UK. They both say they "*..began to physically experience the problems she was having and witnessing them first hand..*". Neither say what they witnessed but make the vague claim that they realised the appellant was deeply affected by the death of her husband. Their evidence is difficult to reconcile with the opinions of Dr Siddiqi who states the appellant presents as a

victim of current psychological trauma due to the prospect of forcible return to Pakistan, and repeats, at [1.5] on page 7 of his report that her *“psychological issues in the diagnoses are 100% as a result of the prospect of forcible return to Pakistan, away from close support”*. The appellant’s daughter and son-in-law claim it was the loss of the appellant’s husband which led to her deterioration, which started as soon as she arrived in the UK, whereas Dr Siddiqui claims it is the fear of return that is causing the appellant’s symptoms. The appellant entered the United Kingdom as a visitor on 11 February 2019 with leave until 18 September 2021. There is no reason why the appellant would have been so very anxious about her immigration status as soon as she arrived, or at the date of Mr Siddiqui’s report, because at that point, the appellant would have been free to travel between the UK and Pakistan in accordance with the terms of her visit visa.

45. In terms of care available in Pakistan, both Mr Hussain and Mrs Begum confirmed they have not visited any care homes. Their witness statements from January 2020 do not say anything about the care available in Pakistan save that the appellant cannot live without the presence and support of those in the UK. Mr Hussain seemed to say they had only asked friends and people they know in Pakistan, rather than approaching any organisations or seeking advice from any authorities. Mrs Begum said there was nothing near where the appellant lived, only one she had heard of which she would not want to put her mother in, although her reasons why were unclear. We note the Article provided at page 371 of the bundle. This confirms that homes are available and that *“well to do families can often afford to hire trained help and prefer to take care of their elderly relatives at home”*. Whilst the standard of care may not be the same as that of care homes in the UK, or the care provided by immediate family, that is not the test. Overall, we find it has not been proved on balance that there are no suitable care facilities in Pakistan, that they would be unaffordable or inaccessible.

46. We also note that both witnesses referred to the appellant's son, Mr Ali, as being involved in the care of his mother, but he has not provided any witness statements and did not appear at the hearing before us. We have no explanation for this. It was Mr Ali who accompanied the appellant to the UK following the death of his father. The appellant is also said to have lived with him for a time after her arrival such that he could comment on the alleged deterioration in the appellant's health and his role in obtaining an assessment and treatment for his mother.
47. As to the letter from Mr Choudhery dated 15 November 2021, he says "*in my opinion she is suffering from onset dementia, and she needs constant supervision and support from family. I have suggested four pillar support...*" He says "*I am giving my opinions due to my knowledge and experience in the social care profession. I am a Group Manager of Adult Social Care Services and previously managed dementia care residential and day care services for older people in Birmingham over 30 years*". He then lists his qualifications. It is clear from these that Mr Choudhery is not qualified to diagnose dementia. We find that, being a family friend for over 10 years, he is also not objective. We therefore attach little weight to this letter.
48. We have read through the contents of the limited GP records that we have in the evidence before us. We note there is a letter from Poplars Surgery dated 15 October 2021 confirming the appellant is being treated for depression and is prescribed sertraline 100mg daily and is being referred to the memory clinic regarding a concern about suspected dementia. There is then a letter dated 28 October 2021 from Birmingham and Solihull NHS Mental Health team scheduling an appointment for 2 November 2021 with Mrs Verona Reid.
49. Verona Reid's letter dated 4 November 2021 is relied upon by Mr Rashid to support his submission that the appellant requires 24-hour care with all her care needs. As Mr Rashid acknowledged, it is impossible to discern the qualifications of the author to make any assessment of care needs, or the reasons for that assessment. Again, Veronica Reid appears

to have relied entirely upon information provided to her by the appellant's daughter and son-in-law. The only comments she makes are "*Mood-low since 2018* (which we note is before her husband died, which conflicts with the other evidence), *Sleep good, Diet- eats small amount, No psychotic features, No self harm, No suicidal ideation, Cognition -cold not assess due to non-engagement and low mood*". There is no evidence before us of any assessment completed by Veronica Reid, and no reasons set out for the suggestion in that letter that the appellant needs 24-hour care. We attach little weight to the claim in that letter that the appellant needs 24-hour care with all her care needs.

50. Having carefully considered all the evidence before us in the round, we find the appellant has no diagnosed physical or mental health conditions for which she is receiving on-going treatment that would not be available to her in Pakistan. We accept that she is now 74 years old but, without more, age in itself is not determinative of a person's ability to care for themselves. We accept Dr Siddiqui's diagnosis that she has moderately severe depression for which she is taking sertraline, as this is confirmed by the GP records but there is no evidence that this medication is not available in Pakistan. We are also prepared to accept that she suffers from severe generalised anxiety arising from her fear of separation from her family. However, we do not accept that she has PTSD as detailed by Dr Siddiqui given our concerns about his report, the bases for the diagnosis and the lack of other supporting medical evidence.
51. The treatment that Dr Siddiqui has recommended, other than anti-depressive medication, has not been pursued by the appellant so to some extent it makes no difference whether it is available in Pakistan or not. We note evidence of mental health facilities in Pakistan has been provided which suggests it may be of a standard lower than that in the UK, but that is not the test. We also note the evidence of there being a stigma attached to mental health issues in Pakistan (article at page 373 of the original bundle), but many of the factors discussed as exacerbating the issues do not apply to the appellant (such as poverty, forced

marriage, abuse, alcoholism) and it is unclear how this relates to an elderly person who has financial support, accommodation, friends and neighbours. It appears the appellant has not taken up the availability of treatment in the UK. Overall, we do not accept that she is in the poor state of health that she claims, or that she requires round the clock care and supervision in the way being claimed.

52. Although the witness statements are at pains to say that “there was no intention to gain entry to the UK by deception and no such deception was ever exercised by my mother or any other member of our family”, we find that a decision was made when, or shortly after the appellant’s husband died, that an attempt would be made to secure her entry to the UK and to then make arrangements for her to remain in the UK. In our judgment that is the reason for the application for leave to remain rather than a genuine need for 24-hour care and supervision.
53. We have considered whether there would be very significant obstacles to the appellant integrating into Pakistan. The appellant was born on 1 January 1948 and arrived in the UK in February 2019 when she was seventy-one years old. She has lived here for three years. As is clear from the preserved findings that we have already set out, the appellant retains connections to Pakistan. It is where she has spent the majority of her life. In light of our findings regarding the appellant’s health, we are satisfied that there is suitable care available to the appellant in Pakistan. Any supervision or assistance the appellant requires with tasks such as cleaning, cooking, bathing, dressing, feeding and the administration of medication, can be arranged and is available in Pakistan. Both Mr Hussain and Mrs Begum confirm that from the limited enquiries they have made, it would be possible to arrange a number of hours of daily care for the appellant in Pakistan. She will not be without emotional or practical support. There are preserved findings that the appellant has a house and land, friends and neighbours and access to health services in Pakistan. She would be supported by her family in the UK, who confirmed they sent financial support for several years. Although the

appellant may face some difficulties in settling back into life in Pakistan, we find that these would be short lived, while she settles back in and secures any necessary care. We are entirely satisfied she is enough of an insider in terms of understanding how life in Pakistan is carried on and that she has a capacity to participate in it. We find that the appellant has failed to establish that there would be very significant obstacles to the appellant's integration into Pakistan. We therefore find on the balance of probabilities that there would not be very significant obstacles to the appellant integrating into Pakistan, and the requirements of 276ADE (vi) are not met.

54. We have no doubt that the appellant would prefer to be cared for by her son and daughter in law, and to remain in the UK with her children and grandchildren, but that does not equate to a right to do so. Whether or not the appellant's daughter accompanies the appellant to Pakistan is entirely a matter of choice for her.
55. We 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. There is little evidence of the relationship the appellant enjoys with her family beyond her daughter and son-in-law. Given she no longer lives with her son and his family, the only aspect that will change is distance and we have nothing to show he would be unable to visit her in Pakistan as he has done previously. As to the daughter and her family, we accept that the relationship is closer but although the refusal of leave to remain will impact upon the appellant's ability to see them as often as they might like, we are not satisfied that the refusal of leave to remain results in unjustifiably harsh consequences for the appellant, her daughter and the wider family. They lived apart from the appellant for several years prior to the appellant arriving in the UK three years ago. The family demonstrated its ability to provide support and maintain their close

relationships when the appellant lived in Pakistan previously, despite the distance.

56. It follows that in our judgment, the appellant cannot meet the requirements of the Immigration Rules.

Whether refusal of leave to remain is nevertheless disproportionate

57. We 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 our decision, we 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 but, due to her age, is exempt from that requirement. She also does not work but is supported by her family in the UK. These are however nothing more than neutral factors in our assessment of proportionality.

Balancing exercise

58. The factors that we consider weigh against the appellant are:
- a. The maintenance of effective immigration controls is in the public interest. We have found that the appellant does not meet the Immigration Rules. We have found the account of her reasons for wanting to stay here is not credible nor supported by reliable evidence.
 - 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 and has remained in the UK lawfully, but her immigration status has always been precarious.

- c. On the findings we have 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.
- d. The impact of any separation can be reduced by the appellant's daughter and her wider family visiting the appellant in Pakistan and communicating by using technology in the meantime, as they have done previously.

59. The factors that we consider weigh in favour of the appellant:

- e. The appellant arrived in the UK lawfully and has taken steps to regularise her immigration status.
- f. 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 daughter's family for some time 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 daughter and her family in the UK, unless her daughter chose to accompany her, in which case her daughter would also be separated from the family in the UK.

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

61. As we have already recorded, no separate Article 3 claim was advanced before us.

62. It follows that we dismiss the appeal.

Notice of Decision

63. We dismiss the appeal on the basis that the refusal of leave to remain does not breach section 6 Human Rights Act 1998 (based on Articles 3 and 8 ECHR).

64. No anonymity direction is made.

Signed **L. Shepherd**

Date 29 April 2022

Deputy Upper Tribunal Judge Shepherd