



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-000538  
UI-2022-000539  
First-tier Tribunal No: HU/07114/2020  
HU/07115/2020

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 15 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE PICKUP**

**Between**

**Raja Mohammed Arif Khan  
Yasmin Tahira  
(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Mr S Vokes, of Counsel  
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**Heard by remote video at Field House on 3 July 2023**

**DECISION AND REASONS**

1. In a decision dated 2.12.22, the First-tier Tribunal granted permission to the husband and wife appellants to appeal to the Upper Tribunal against the decision of the First-tier Tribunal (Judge Juss) promulgated 5.10.21 dismissing their linked appeals against the respondent's decision of 25.8.20 to refuse their application for Leave to Remain (LTR) under paragraph EC-P.1 of Appendix FM of the Immigration Rules, as the dependent relatives of their son, RK.
2. The two appellants live with the elderly mother of the first appellant, SB, who has indefinite leave to remain in the UK and is said to suffer from chronic health problems requiring 24-hour care allegedly provided by the appellants. Also living in the same property is the appellants' youngest son, his British citizen wife, and the couple's young child. They also have an older son who is also married to a British citizen and living in the UK. It is alleged that for cultural reasons the moral responsibility for the care for the first appellant's mother lies with the first appellant and his wife, the second appellant.

3. The grounds argue that the First-tier Tribunal failed to provide any adequate reasons for findings on material matters in the following respects: (i) failing to determine whether removal would be unjustifiably harsh on the first appellant's mother, SB; (ii) failing to recognise that SB is emotionally dependent on both appellants; (iii) erroneously stating at [26] that the independent social work report failed to take into account that removal of the appellant does not mean that SB's needs will no longer be provided; and (iv) erred in not engaging with the high level of dependency on the appellants when stating that other members of the family can provide necessary care. As I understand it, the point being made in the grounds is less about the provision of necessary physical care but more about the emotional impact of long-term family care provided by the appellants being removed. However, it is argued that without the appellants, the likely alternative for SB would be residential care at local authority expense as other family members cannot provide the necessary care.
4. The grant of permission considered it arguable that the First-tier Tribunal failed to consider the effect of the appellants' removal on SB in the article 8 proportionality assessment. It was also considered arguable that the judge failed to explain why the appellants' relationship with the first appellant's mother did not go beyond normal emotional ties when they live with her and provide her with a very significant amount of care and support.
5. The respondent's Rule 24 reply, dated 20.12.22, opposes the appeal for the reasons set out therein.
6. In reality, the grounds are largely a mere disagreement with the findings and weight given to various aspects. As explained in MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC) the Upper Tribunal held that, "A judge considering an application for permission to appeal to the Upper Tribunal must avoid granting permission on what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal judge's assessment of the evidence."
7. The grounds also somewhat misrepresent the findings and reasons of the First-tier Tribunal. The judge did not fail to consider the unjustifiably harsh test. Neither did the judge err in the assessment of the independent social work report, which was referenced in at least three paragraphs of the impugned decision. At [26], the judge was simply pointing out that the report failed to take into account that removal of the appellants did not mean that SB's physical health needs would be left unmet. The Rule 24 reply points out that the judge found the first appellant's claims not credible and that the extent of the care arrangements for SB and the alleged necessity for them to be met by the two appellants was contrived. It is submitted by the respondent that there was no inconsistency between finding nothing beyond the normal emotional ties and the claim by the appellants that the judge recognised at [26] that SB was dependent on the appellants. The assertion by the appellants is based on a misreading of the decision; the judge did not accept that support amounting to dependency was provided and went on to find that the appellants' removal did not mean that SB's health and welfare needs would not be provided for.
8. Unarguably, the judge made findings that were open on the evidence, and which were cogently reasoned. The two appellants, who have spent the bulk of their lives in Pakistan, developed their claimed family life with the first appellant's mother whilst in the UK in breach of immigration law. It was open to the First-tier Tribunal to conclude that the true relationship with the first appellant's mother amounts to no more than normal emotional ties. The appellant's son and family also live in the same household and the care allegedly provided by the two appellants is by their own choice and not necessity as there are very obviously

other family members available to provide any necessary care. Mr Vokes argued that without the appellants' care, SB would require residential care. However, at [25] the judge found that the only reason that the appellants are directly responsible for SB's case is that they have chosen to do so, whereas the possibility of other assistance had not been explored. The judge found at [25] that family members other than the appellants can and do provide some care and that State care would also be available. The judge found that SB's care being provided by the appellants was a deliberate choice convenient to the appellants' case and not a necessity, and that removal of the appellants would not mean that SB's proper care needs would not be met.

9. I am satisfied that the reasoning of the First-tier Tribunal set out from [24] of the decision was entirely open on the evidence. The judge provided cogent reasoning for the conclusion at [26] that it would not be unjustifiably harsh for the two appellants to be removed to Pakistan. For the reasons set out herein, I am satisfied that all the findings were open to the Tribunal on the evidence, including that SB's actual health needs would not be left unmet as a result of the removal of the two appellants. Undoubtedly, other family members including those living with SB could assist in providing necessary care and emotional support in the appellants' absence.
10. In any event, it is clear from [23] of the decision and the reasons that follow that the First-tier Tribunal did not find the appellants to have discharged the burden of proof. In particular, for the cogent reasons given at [24], the judge did not accept that there would be a breakdown of the family unit if the appellants were required to leave. At [25] the judge made the valid point that whilst the appellants claim responsibility for SB's care, this was only because they had chosen to do so and because the possibility of "national assistance" had not been explored. The judge found that such care as was provided to SB could be given by other family members. At the conclusion of [25] the judge found that to the extent to which SB's care needs were met by the appellants, that was by deliberate choice by the appellants and not by necessity.
11. The grounds also argue that removal of the appellants' care would have an adverse effect on SB's emotional wellbeing. In essence, the argument is that because she has been emotionally dependent on the appellants for such a long time, they should be permitted to remain, even though their presence has been unlawful and not in fact essential to meeting her physical health needs. In essence, reliance is placed on emotional wellbeing reasons. However, there appears to be no reason why that emotional wellbeing could not be provided by other family members, including in particular those living with her. Unarguably, the findings of the First-tier Tribunal were open on the evidence and justified by cogent and adequate reasoning.
12. In summary, there was nothing even arguably disproportionate in the dismissal of the appellants' claim. Unarguably, adequate care would be available for SB even without the appellants, whether by other family members, or the state, or a combination of both. Nothing in the grounds demonstrates that removal of the appellants would have an unjustifiably harsh effect on SB or anyone else. There were no insurmountable obstacles to the appellants returning to continue their lives in Pakistan, nor unjustifiably harsh consequences to them being required to return to Pakistan. Nothing in the grounds renders the decision of the First-tier Tribunal disproportionate to the relevant circumstances on the findings open to the First-tier Tribunal.

**Notice of Decision**

The appeal of each appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal of each appellant remains dismissed on all grounds.

I make no order for costs.

DMW Pickup

**DMW Pickup**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**3 July 2023**