



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

**Case No: UI-2023-001880**

**First-tier Tribunal No:  
HU/53607/2020 (IA/05604/2022)**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 22<sup>nd</sup> of March 2024**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE  
DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MRS FAROOQ BEGUM  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Tan, Senior Home Office Presenting Officer

For the Respondent: Ms Bhachu, Counsel

**Heard at Manchester Civil Justice Centre on 5 March 2024**

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan, born on 1 January 1959, who on 2 February 2022 applied for leave to remain on family and private life grounds.
2. The Respondent refused her application in a decision sent out on 1 June 2022 because:

- a. She was not satisfied the Appellant satisfied the eligibility requirements contained in paragraphs E-LTRP 1.1 to 1.2 and E-LTRP 2.1 to 2.2 of Appendix FM to the Immigration Rules.
  - b. She concluded that Paragraph EX.1 of Appendix FM to the Immigration Rules was not met.
  - c. The Appellant did not satisfy paragraph 276ADE HC 395.
  - d. Medical issues raised by way of Article 3 ECHR did not meet the required threshold.
  - e. There were no exceptional or compelling circumstances to merit a grant of discretionary leave outside of the Immigration Rules under article 8 ECHR.
3. The Appellant appealed to the First-tier Tribunal on 14 June 2022 and her appeal was listed before Judge of the First-tier Tribunal Sweet (hereinafter referred to as the FTTJ) on 26 April 2023 and in a decision promulgated on 29 April 2021 the FTTJ allowed the appeal.
  4. Permission to appeal was granted by First-tier Tribunal Judge Chohan on 31 May 2022 and the matter came before Deputy Upper Tribunal Judge Alis (hereinafter referred to as DUTJ) on 5 October 2023.
  5. Having heard submissions from both Mr McVeety on behalf of the Respondent and Ms Bhachu, DUTJ concluded there had been an error in law in relation to article 8 ECHR because:
    - a. The FTTJ's decision did not properly explain, with adequate reasons, why the FTTJ concluded that both paragraph 276ADE HC 395 and paragraph EX.1 of Appendix FM were met.
    - b. The FTTJ found that no enquiries had been made about what care or help could be provided by third parties to the Appellant and also accepted that her medication was available in Pakistan.
    - c. The FTTJ failed to consider or explain why the Appellant's husband could not accompany her to Pakistan save for acknowledging he was a British citizen. They had of course married in Pakistan before he returned to live in the United Kingdom.
    - d. The FTTJ also failed to give any weight to the fact there maybe help available from third parties.
  6. On 21 December a Transfer order was made to enable this appeal to be heard by ourselves.
  7. We agreed to admit into evidence a 34 page bundle plus two additional letters (dated 18 and 25 January 2024).

8. The Appellant thereafter adopted her statement dated 1 September 2022 and gave brief evidence. She described her current health condition as “very bad” referring to her arthritis, diabetes, pains in her stomach and worsening eyesight. She stated these conditions affected her daily life and she relied on her daughter for day to day to care. She confirmed she lived with her husband but that her daughter also lived at the property with her. She stated that if she was required to return to Pakistan she would be alone and would not have the support she currently received from her children.

## **SUBMISSIONS**

9. Mr Tan relied on the decision letter and the Respondent’s review dated 10 October 2022. Dealing with paragraph EX.1 of Appendix FM of the Immigration Rules, Mr Tan submitted the Appellant had failed to demonstrate there would be insurmountable obstacles to family life continuing in Pakistan. It was apparent from the paperwork the Appellant’s husband, the Sponsor, spent time in Pakistan and the Appellant had both historical, property and family ties in Pakistan. He submitted that her family could continue to provide her with support them.
10. With regard to paragraph 276ADE(1)(vi) HC 395 Mr Tan summarised the medical evidence and referred to page 71 of the main bundle which provided an overview of the Appellant’s medical condition as at April 2022. Mr Tan submitted this letter did not deal in any detail with how her symptoms affected her.
11. There was a more recent letter on page 2 of the 34 page bundle from the eye hospital dated October 2022 which stated (page 3) that the left eye was clinically stable.
12. Mr Tan reminded the Tribunal the FTTJ had recorded a concession from the Appellant’s original representative who had conceded the Appellant’s required medication was available in Pakistan. The Sponsor would be able to return with her and provide assistance and although he himself had some medical issues these did not affect his everyday life.
13. Mr Tan submitted that the content of the letters from Dr McEvoy on pages 21 and 26 of the same bundle were speculative and as there was no copy of the letter of instructions limited weight should be attached to them especially as they failed to acknowledge that the Appellant’s husband could return with her and provide assistance. There would be nothing to prevent the Appellant returning to Pakistan with her own medical records and providing them to the medics in Pakistan. Since the matter was last before the Tribunal on 5 October 2023 no further evidence about the level of care available had been provided which would support the Appellant’s claim she would not have access to care.

14. These points equally applied to the Appellant's standalone article 8 ECHR claim. There remained a strong public interest to remove the Appellant under section 117B because she was an overstayer, had been using NHS resources, did not speak English and there was a lack of financial independence. Whilst her children may assist this was not reflected in the evidence before the Tribunal. Mr Tan also submitted there was no guarantee any adult dependency application would succeed. He submitted it was not disproportionate to refuse the appeal.
15. Ms Bhachu invited the Tribunal to allow the appeal. The sponsor is a British citizen and his home is the United Kingdom alongside his children who are also British citizens.
16. The Appellant's evidence was that she would have to return alone as her family are all legally settled here. The sponsor himself has health issues himself and both he and Appellant were dependent on their children and if the Appellant were forced to leave this country she would lose the level of support she now had.
17. Ms Bhachu referred to the medical letter on page 71 of the main bundle which confirmed the Appellant's medical issues and the medication she has been prescribed. There was additional medical evidence and in particular at page 26 of the 34 page bundle. This later document considered the impact on her being removed based on her medical issues.
18. With reference to the issue of dependency, Ms Bhachu submitted a holistic approach to the evidence should be taken and regard should be had to her cultural ties, family members and impact her removal would have on them all. The Appellant had been here since 2016 and this should not be overlooked. There were bank statements from the children in the main bundle (page 133 onwards) which showed there was financial support from them. If the Rules were not met the fact she could meet the eligibility requirement of Appendix FM should be taken into account.

## **DISCUSSION AND FINDINGS**

19. Having heard the Appellant's oral evidence and submissions from both representatives we reserved our decision.
20. The Appellant's immigration history demonstrated the Appellant was originally granted a visit visa as long ago as 29 January 2004 and this visa enabled the Appellant to spend up to six months at a time in this country. She last entered the United Kingdom on 29 September 2015 as a visitor and whilst here lawfully she made an application to remain on private life grounds on 22 January 2016. That application was refused on 15 July 2016 and despite judicially reviewing that decision she was unsuccessful. It was not disputed that the Appellant had been in this country unlawfully since 15 July 2016. It was also not disputed that the Sponsor had come to this country as a visitor in 2003. He returned to see the Appellant and his two children, who remained with the Appellant, every 1-2 years in Pakistan. He

became a British citizen in September 2013. We noted all the children were British citizens as well.

21. The Appellant made her current application on 2 February 2022 and whilst the Respondent challenged the genuineness of her relationship to the Sponsor this was no longer an issue for us to consider as both the genuineness and subsistence of her relationship was now accepted following her appeal before the First-tier Tribunal.
22. The Appellant now argued that removing her would breach both paragraph 276ADE(1)(vi) HC 395 and paragraph EX.1 of Appendix FM of the Immigration Rules or alternatively there were exceptional circumstances that made her removal disproportionate.
23. From the statements of the Appellant, the Sponsor and their daughter, Ansa, alongside what they had told both the First-tier tribunal and ourselves we concluded the Appellant and Sponsor lived together with Ansa. All the other children were married and had properties in the Bolton area where they lived with their families. The Appellant's evidence was she spent time at all their homes. Prior to coming here she stated she lived alone in Pakistan, except when her husband visited her, and had done for three years prior to 2015. The Appellant places weight on these relationships as evidence of her private/family life.
24. The Appellant also provided medical evidence about herself and we were today referred to a medical report dated 6 April 2022 and a more recent undated report from Dr McEvoy along with her medical records. There was also a medical report dated 6 March 2023 which was contained in the main bundle at page 140.
25. Her medical problems can be summarised as follows:
  - a. Type 2 diabetes which according to the doctor was poorly controlled.
  - b. Essential Hypertension
  - c. Bilateral knee osteoarthritis
  - d. Depression for which she was taking Mirtazapine
  - e. Left eye retinal vein occlusion. This was stable clinically and a scan revealed a securely attached retina.
  - f. Vitamin D deficiency.
26. Dr McEvoy stated her medical problems had a significant effect on her day to day life. The doctor had no details about what care she received from her family although he stated her family ensured she attended appointments, took her medication and monitored her health. Whilst the doctor expressed concerns about the effect any removal to Pakistan would have on the Appellant he/she did not factor into her opinion the fact she was married and there would be nothing to stop her husband accompanying her to Pakistan or the option of third party support/care. The doctor appears to have no knowledge of the family's financial

circumstances and states at paragraph [7] of the report that he was no expert in the health service in Pakistan. It was acknowledged that either the same or similar medication was freely available in Pakistan.

27. DUTJ had previously adjourned the matter and given directions about service of further evidence. Since that adjournment the Appellant submitted nothing further to address these specific issues. The Appellant may have provided bank statements and further medical evidence but none of this addresses the very issue that led to the original decision being set aside.
28. The Respondent's review referred to the CPIN: Pakistan-Medical and Healthcare Provisions 2022 which confirmed not only could the Appellant access similar or the same medication in Pakistan but there was support for mental health counselling both as an inpatient or outpatient and if she attended at a public hospital/facility the treatment would be free. Whilst Ms Bhachu submitted that the Appellant was not reliant on public funds the letters from Dr McEvoy did not address any of these issues save he acknowledged he is not an expert in such areas.
29. As regards her claim she would not have the necessary support it seems from her medical records that her main complaints are longstanding and prior to coming here she lived alone. The Sponsor may be a British citizen but he is also a Pakistani national. He may prefer to stay here but we cannot overlook the fact he could return with her as the country and culture well known to him. The family continue to have a family home in Pakistan.
30. We therefore concluded on the evidence before us there was access to medical facilities and medication in Pakistan and there would be nothing to stop the Sponsor from accompanying the Appellant to Pakistan.
31. Against this background we have considered the Appellant's claims under the various Rules.
32. The Appellant failed to demonstrate she could meet either the eligibility or financial requirements because she came here as a visitor and consequently cannot satisfy either Section E-LTRP 2.1 (a) of Appendix FM of the Immigration Rules or the financial requirements of Section E-LTRP 3.1 to 3.4 of Appendix FM of the Immigration Rules. However, the Appellant could potentially succeed under the Rules if she satisfied Section EX.1 of Appendix FM of the Immigration Rules. The Appellant had to demonstrate there were insurmountable obstacles to their relationship continuing outside the United Kingdom.
33. Clearly, whilst the Sponsor may have some health issues we concluded that he too could access medical care. We concluded that there were no insurmountable obstacles to their relationship continuing outside the United Kingdom given the Appellant lived in Pakistan for around 56 years before coming here in 2015 and the Sponsor also spent a large part of his

life either living there or visiting there. The family home remained available to them. The Appellant (and Sponsor) are supported financially in this country by their children and there is no reason why this could not continue regardless of where they lived.

34. Paragraph 276ADE(1)(vi) HC 395 allows the Appellant to succeed on private life grounds if she can show there would be very significant obstacles to her reintegration into Pakistan. In assessing whether there are very significant obstacles I have had regard to the Respondent's own guidance on what amounts to very significant obstacles.
35. The latest guidance issued by the Respondent suggests, "A 'very significant obstacle to integration' means something which would prevent or seriously inhibit the applicant from integrating into the country of return. You are looking for more than the usual obstacles which may arise on relocation (such as the need to learn a new language or obtain employment). You are looking to see whether there are 'very significant' obstacles, which is a high threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or if establishing a private life in the country of return would entail very serious hardship for the applicant."
36. The Appellant has lived here since 2015 but has been here unlawfully since the expiry of her leave. Both her and her the Sponsor have spent the majority of their lives in Pakistan. They have children who we are satisfied would provide practical and financial assistance for the reasons given above. The Appellant gave evidence through an interpreter and would therefore have no issue with being able to communicate in Pakistan.
37. We considered the evidence about the availability of healthcare and support and concluded for the reasons given above that support was available.
38. We concluded there were no very significant obstacles to the Appellant's reintegration into Pakistan. As the Appellant has failed to demonstrate she meets this high threshold we find that she did not satisfy paragraph 276ADE HC 395.

#### Article 8 balancing exercise

39. Although Article 8 (1) is engaged, the Rules are not met for the reasons given above. The public interest lies in the maintenance of effective immigration controls. To strike a fair balance between the competing public and individual interests involved, we adopt a balance sheet approach:
  - a. We weigh the following public interest factors against the Appellant:

- i. The maintenance of effective immigration controls is in the public interest. The Appellant came on a temporary visa in the knowledge it was not a route to settlement. We do not accept that there is any good reason for a dilution of the strong public interest.
- b. We note the following factor is neutral:
  - i. We accept that the Appellant has not been a direct burden on the taxpayer as she has been financially supported by her children albeit we note she has extensively utilised the NHS.
- c. We weigh the Appellant's private life factors in their favour in particular:
  - i. The Appellant's family lives in this country and are British citizens.
  - ii. The Appellant wishes to remain here with her whole family.
  - iii. The Appellant has been here for a number of years which has enabled her to form some connections and possibly make friendships in the UK.
  - iv. The initial difficulties the Appellant perceive she will face returning to Pakistan, even though we have found they are neither very significant nor insurmountable obstacles.

Nevertheless, we have had regard to the statutory consideration that little weight should be given to a private life established by a person at a time when the person is in the UK unlawfully or their immigration status is precarious.

40. We find that the factors raised by the Appellant do not outweigh the public interest because in a case such as this the essential elements of private life on which the Appellant relies, such as relationships with the Sponsor, is capable of being replicated in Pakistan and her contact with children had for many years prior to coming to this country been maintained through mutual visits although we do not suggest that they would be the same.
41. The Appellant will be able to live and access hospital and medication in Pakistan as she did in the UK.
42. Looking at the overall picture of the circumstances as we have found them to be and for the reasons we have already given, we find the factors raised by the Appellant do not outweigh the public interest in removal.
43. We find the scales fall on the side of the public interest and the decision is proportionate.



44. Notwithstanding the Appellant's private and family life in the UK and the difficulties she will face on return to Pakistan, the decision does not lead to unjustifiably harsh consequences and does not breach Article 8 ECHR.

**Notice of Decision**

There was an error in law.

We set aside the Tribunal's decision in relation to article 8 ECHR and we remake it and dismiss the appeal.

Deputy Judge of the Upper Tribunal Alis  
Immigration and Asylum Chamber

**18 March 2024**