IAC-AH-DH-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/08584/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Determination Promulgated**
On 9 October 2014	**On 21 October 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SHAMIN AKHTAR

Respondent

Representation:

For the Appellant: Mr A McVeety, Senior Home Office Presenting Officer
For the Respondent: Ms M Logan, instructed by J R Jones Solicitors

DETERMINATION AND REASONS

1. The respondent, Shamin Akhtar, is a citizen of Pakistan and was born on 6 April 1950. The respondent arrived in the United Kingdom with a visit visa on 2 June 2013. On 20 August 2013, she sought indefinite leave to remain "due to her compassionate

compelling circumstances." The appellant refused that application by a decision dated 13 January 2014. A decision was also taken on the same date to remove the respondent from the United Kingdom by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006. The respondent appealed against that decision to the First-tier Tribunal (Judge Robson) which, in a decision promulgated on 3 July 2014 allowed the appeal under the Immigration Rules. The relevant Rule is 276ADE.

2. The judge concluded that the respondent satisfied the requirements of sub-paragraph (i) and, being over the age of 18 years and having not lived in the United Kingdom continuously for more than twenty years satisfied the Rule because she had "no ties (including social, cultural or family) with the country (Pakistan) to which she would have to go if required to leave the UK.

3. Mr McVeety, for the appellant, submitted that the issue of "no ties" was the sole issue upon which the appeal turned; whilst accepting that the respondent suffers from poor health, he did not accept [51] that the respondent's health had deteriorated as rapidly as it had been claimed (between her arrival in the United Kingdom on a visit visa and her application for the leave to remain). The judge had also taken "the view that the visit to the United Kingdom was for [the respondent] to remain in the United Kingdom and receive treatment but not on a private paying basis [52]." The judge was not satisfied [53] that the immigration decision would breach the respondent's right to a family life in the United Kingdom "as a relationship between the adult [respondent] and her children does not to my mind amount to a family life without evidence of further evidence of dependency." Ms Logan, for the respondent, did not take issue with the submissions that the appeal did turn on the issue of "no ties" only.

4. The judge addressed that aspect of the appeal relatively briefly at [58-60]:

> 58. However, albeit that there are a significant number of immediate family members in the United Kingdom as Mr Ali [the nephew of the respondent] said in his evidence he had tried to contact some friends and relatives in Pakistan although he had been unsuccessful. This does however suggest that there are other relatives in Pakistan although equally I accept that these will not be close relatives since the majority of the family live now in the United Kingdom.
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> 59. Given the loss of her home and the village in which the home was based I find that she will have lost the social cultural ties that she had with her home area.
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> 60. Although I have expressed my doubts about the motives behind the visit to the United Kingdom it is a fact of the matter that she does undoubtedly suffer from poor health for which she will require medical treatment and family support."

5. Granting permission to appeal, Judge N J Bennett observed:

> However, the second ground is arguable because it is arguable that it was not open to the judge to find that a 64 year old widow who had only left her country of origin a

year previously had no ties to her country of origin, even though her house had been destroyed, and that the judge thereby arguably erred in law.

6. The destruction of the appellant's house had occurred as a result of the construction of a dam which had led to her village being flooded.

7. Mr Logan submitted that the requirement to have ties with one's country of origin was a "presently existing" requirement as opposed to a historical fact. She submitted that the respondent could not have ties to Pakistan because she no longer had the home there in which she had lived. She referred also to the medical evidence which indicated (as the judge found at [50]) that the respondent needs "some care" with her mobility and daily household activities. She submitted that the appellant could not function in Pakistan on her own and without the help of close family members.

8. The Upper Tribunal discussed the "no ties" provisions of the Immigration Rules in *Ogundimu (Article 8 – new Rules) Nigeria* [2013] UKUT 00060 (IAC) at [119-126]:

119. Mr Allan seeks to persuade us that the meaning of the words 'no ties (social, cultural or family)' in paragraph 399A of the Immigration Rules is such that the rule precludes reliance on it by those persons with even the most minimal of links to the country of proposed removal.

120. In approaching our consideration of the meaning of this rule we remind ourselves of the guidance given by Lord Hoffmann in Odelola v Secretary of State for the Home Department [2009] 1 WLR 1230:

> "[4] Like any other question of construction, this [whether a rule change applies to all undetermined applications or only to subsequent applications] depends upon the language of the rule, construed against the relevant background. That involves a consideration of the immigration rules as a whole and the function which they serve in the administration of immigration policy."

121. In Mahad v ECO [2009] UKSC 16, Lord Brown, when considering the question of construction of the Immigration Rules, said as follows:

> "[10] The rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument but, instead, sensibly according the natural and ordinary meaning of the words used, recognising that they are statements of the Secretary of State's administrative policy. The respondent's counsel readily accepted that what she meant in her written case by the proposition "the question of interpretation is…what the Secretary of State intended his policy to be" was that the court's task is to discover from words used in the Rules what the Secretary of State must be taken to have intended…that intention is to be discerned objectively from the language used, not divined by reference to supposed policy considerations. Still less is the Secretary of State's intention to be discovered from the Immigration Directorates Instructions"

122. We take note of the fact that the use of the phrase "no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK" is not

exclusive to paragraph 399A of the Rules; it is also used in paragraph 276 ADE, in the context of the requirements to met by an applicant for leave to remain based on private life in the United Kingdom when such person has lived in the United Kingdom for less than 20 years.

123. The natural and ordinary meaning of the word 'ties' imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person's nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.

124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has 'no ties' to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to 'social, cultural and family' circumstances. Nevertheless, we are satisfied that the appellant has no ties with Nigeria. He is a stranger to the country, the people, and the way of life. His father may have ties but they are not ties of the appellant or any ties that could result in support to the appellant in the event of his return there. Unsurprisingly, given the length of the appellant's residence here, all of his ties are with the United Kingdom. Consequently the appellant has so little connection with Nigeria so as to mean that the consequences for him in establishing private life there at the age of 28, after 22 years residence in the United Kingdom, would be 'unjustifiably harsh'.

125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members.

126. Thus, for the reasons we have given above, if we were deciding this appeal solely in accordance with the provisions of the new rules, as we were invited to do by Mr Allen, we would allow the appeal on the two bases we have indicated

9. The same provision was also considered by Andrews J in *Bailey* [2014] EWHC 1078 (Admin) at [13-17]:

13. Mr Najib submitted, by reference to Ogundimu, that sub-rule (vi) is in the nature of a true exception. It applies to someone who would otherwise be subject to the 20 year residence requirement but is able to demonstrate that he or she has no ties with the country with which he or she is to be returned. In such circumstances, it would be considered "unjustly harsh" to expect such an individual to establish private life in a country with which he or she has no ties, i.e. a country in which he or she would be a stranger. However, Blake J said in paragraph 125:

"Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members."

14. The court had already made it clear that consideration of whether a person has "no ties" to such other country must involve a rounded assessment of all the relevant circumstances and is not to be limited to social, cultural and family circumstances. It follows from that, that no single one of those factors can have a decisive bearing on the determination of whether there are "no ties" and thus the mere fact that an applicant has no family or friends in the country will not in and of itself lead inextricably to the conclusion that there are no ties. I agree with those submissions.

15. In the present case, the decision maker was entitled to take into account the fact that Mrs Bailey had spent most of her formative years in Uganda, that she had only come to this jurisdiction in her twenties, that she had only been within this jurisdiction for some 8 years, that she had clearly had an exposure to the cultural norms of her country of origin, and that she spoke the language of that country. In the light of all those factors, in my judgment, it is impossible to say that the decision that she did not qualify under the relevant sub-rule of paragraph 276ADE was irrational, or unlawful, or *Wednesbury* unreasonable, even if one were to assume in her favour that she has no friends or relatives in Uganda. It plainly is not the sort of case with which the Upper Tribunal was concerned in Ogundimu or indeed in Green. Both of those were cases involving people who had come to this country as very young children and been granted leave to remain in the jurisdiction, who had no ties whatsoever with their country of origin, but who had then committed criminal offences and therefore appeared to be subject to compulsory deportation to that country, subject only to Article 8 considerations. But this is not a case in which it could possibly be concluded that Mrs Bailey would be a complete stranger to Uganda, however strong the ties that she has formed in the UK since coming to this country and overstaying her visa.

16. In those circumstances, the main ground of challenge simply does not get off the ground, regardless of any further information relied upon by the Secretary of State in relation to family members in Uganda. That information, on the face of it, appears to be credible and there is no information before me to suggest that it is not. But, as I have said, it would be unfair to Mrs Bailey to take into account something that it is not clear was before the decision maker. So the decision I have made is on the assumption in her favour that the decision maker was referring purely to her half siblings. Even if one assumes in her favour that there is no real connection with them, there are more than enough remaining factors to say there *are* ties with Uganda, such that she does not qualify under the rules.

17. That really leaves the question of the consideration of her case outside the rules, bearing in mind that the balancing exercise has largely been carried out already in considering her case within the rules. However, the decision maker has gone into considerable detail in looking both at Article 3 and at Article 8 outside the rules, in the second of the two decisions made in September 2013. The highest that the claim can be put in relation to the

> consideration of whether a discretion should have been exercised outside the rules, is that insufficient account was taken of the ties that Mrs Bailey had formed in this country with members of her deceased husband's family (his late mother, and her sister-in-law, who wrote a letter in support of her application). But it is clear from her sister-in-law's letter that the nature of their ties is not one of any dependency. Rather, it is a social relationship which largely consists of written and verbal communications by telephone, by e-mail and text, with two or three social visits in the course of a year. That falls a long way short of the kind of ties whose strength means that a refusal of leave or a decision to deport would be disproportionate interference with private or family life. In fact, the nature of the relationship is such that it would not readily qualify as "family life" under Article 8 at all, but rather as private life. In my judgment, the decision maker was entitled to come to the view that it was open to Mrs Bailey to retain those ties with her sister-in-law and other members of her late husband's family from Uganda, using modern methods of communication.

10. It is clear from *Ogundimu* that, for example, the mere possession of a particular nationality does not indicate that an individual has ties to the country of that nationality. However, I observe that the Upper Tribunal in *Ogundimu* found that the proper analysis of a decision maker must involve an assessment of all *relevant* circumstances; one of the difficulties in the instant case is that the judge may have had regard to *irrelevant* circumstances. The fact that the appellant's close family members may live in the United Kingdom, that she is happy living with them here and is receiving medical treatment is not, in my opinion, a circumstance relevant to determining the "no ties" issue. The focus of the analysis should instead be very much upon the appellant's relationship (or, as the case may be, lack of relationship) with her country of origin. Little weight should be attached to her circumstances in the United Kingdom. It is for that reason that I reject Ms Logan's submissions that the judge was right to have attached weight to the respondent's "medical treatment and family support"

11. I find that the judge also erred in law in finding that the respondent's ties to Pakistan had been entirely severed because the particular property in which he lived had been demolished or flooded. The Immigration Rule speaks of the *country* to which an appellant will return, not the specific property, town or village which he or she left to travel to the United Kingdom. It is simply not the case that the appellant's ties to Pakistan (her home for the vast majority of her life) had been severed because she may upon return have to live elsewhere than in her previous home. Using the expression employed in *Bailey*, the appellant would not be a complete stranger upon her return to Pakistan.

12. In the light of my observations, I find that the First-tier Tribunal erred in law such that its determination falls to be set aside. I have remade the decision. The appeal is dismissed under the Immigration Rules. I note that the grounds of appeal to the First-tier Tribunal included reference to Article 8 ECHR. As I have noted above, the respondent does not dispute the judge's findings that she has no right to remain in the United Kingdom on the basis of her family life. The public interest concerned

with the respondent's removal is a strong one; the judge has found that the respondent has sought and obtained a visit visa but that she had no intention of returning to Pakistan; indeed, within the matter of a few weeks, she had applied to remain in the United Kingdom indefinitely. The maintenance of proper immigration controls must require that individuals who abuse the visit visa system in such a manner should be strongly discouraged. I find that the removal of the respondent would not lead to a disproportionate interference with her private life.

DECISION

13. The determination of the First-tier Tribunal which was promulgated on 3 July 2014 is set aside. I have remade the decision. The appeals against the immigration decision dated 13 January 2014 are dismissed under the Immigration Rules and on human rights (Article 8 ECHR) grounds.

Signed Date 20 October 2014

Upper Tribunal Judge Clive Lane