



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

Appeal Numbers: IA/30094/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 26th November 2014**

**Decision and Reasons Promulgated
On 27th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ASKAR BIBI

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer

Officer

For the Respondent: Ms B Smith, instructed by AMR Solicitors

Interpreter: Ms Nayyara Mubashira (Punjabi)

DECISION AND DIRECTIONS

1. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of Pakistan born on 1st July 1952. Her appeal against the Respondent's decision refusing leave to remain under paragraph 317 of

the Immigration Rules was allowed by the First-tier Tribunal in a determination promulgated on 4th March 2014. The Secretary of State appealed.

2. Permission to appeal was granted by First-tier Tribunal Judge Holmes on 10th April 2014 on the grounds that it was arguable that First-tier Tribunal Judge Coutts had misdirected himself in his approach to the evidence. No adequate consideration was given to the daughter's circumstances in Pakistan or her ability to assist the Appellant. "Cultural" considerations were referred to in the briefest terms, without being adequately explored, and there was no consideration of care services from third parties that the sponsor could fund. The determination made no reference to Mohamed v Secretary of State for the Home Department [2012] EWCA Civ 331.
3. At a hearing on 4th June 2014, I found that the Judge's findings were insufficient to support his overall conclusion that the Appellant satisfied all the requirements of paragraph 317. There was no consideration as to whether or not the payments by the Sponsor were essential to help the Appellant achieve a reasonable lifestyle. Paragraph 317 of the Immigration Rules required the Appellant to show the "most exceptional compassionate circumstances." Applying Mohamed, the circumstances must be extreme to satisfy the Rules. The facts as found by the Judge were compassionate, but not the most exceptional. That was not to say the Appellant could not demonstrate the most exceptional compassionate circumstances, but the evidence before the Judge was insufficient to allow him to reach that conclusion.
4. I found that the Judge's findings at paragraphs 8 to 10 were insufficient to reach the high threshold of the most exceptional compassionate circumstances, or to conclude that the Appellant was financially dependant on the Sponsor in the UK. I found that the Judge erred in law and I set aside his decision dated 4th March 2014. None of the findings of fact were preserved.
5. At the hearing today, Ms Smith relied on her skeleton argument and submitted that the appeal should be remitted to the First-tier Tribunal because it was to be re-heard *de novo* and the Appellant would be denied an avenue of appeal if the matter was heard by the Upper Tribunal. I was concerned that there was little evidence on the face of the papers of the Appellant's personal and financial circumstances in Pakistan. She had, however, submitted personal bank statements with her application. These were found on the Home Office file, but were not in the Respondent's bundle on the court file. The copies were difficult to read.

6. Mr Walker was satisfied that there was sufficient evidence to show that the Appellant could satisfy the maintenance and accommodation requirements. It was agreed by the parties that the two issues in this appeal were exceptional compassionate circumstances and financial dependency on the Sponsor. I had allowed the Respondent's appeal to the Upper Tribunal on the basis that there was insufficient evidence to show that these two requirements of paragraph 317 of the Immigration Rules were met.
7. The Appellant is 62 years old and has been in the UK since April 2012. She had visited the UK on numerous occasions from 2006 to 2012. She last arrived on 22nd April 2012 and her leave expired on 22nd October 2012. She applied for indefinite leave to remain on 5th July 2012.
8. There was evidence to show that the Appellant suffered from various medical conditions and could not look after herself. She was unable to self-administer medication because she failed to understand the complex dosing schedules. Her daughter in Pakistan was able to visit her, but could not live with her, and the Appellant could not live in her daughter's house because she had five children of her own and it was not culturally acceptable. The Appellant's mother and entire family lived in the UK, save for her daughter.
9. There was evidence to show that the Sponsor sent money to the Appellant from 2004 to 2006 by money transfer. There was also evidence that money was sent with relatives and a transfer of £5000 was made into the Appellant's bank account in Pakistan on 9th July 2010.
10. There was insufficient evidence in the witness statements and in the documentary evidence to show that the Appellant was mainly or wholly financially dependant on the Sponsor and that she was unable to obtain help or move house to be near her daughter, following Mohamed.
11. Therefore, having regard to the overriding objective, I am of the view that in the interests of fairness the Appellant should be given the opportunity to present her case in the First-tier Tribunal and to provide oral and documentary evidence of her personal and financial circumstances in Pakistan. The First-tier Tribunal would be the appropriate forum to hear substantial oral evidence and make findings of fact, and the Appellant would not be denied an avenue of appeal.
12. Accordingly, I have decided in accordance with paragraph 7.2 of the Practice Statements of 25th September 2012 that the appeal should be remitted to the First-tier Tribunal.

DIRECTIONS

- (i) The Tribunal is directed pursuant to section 12(3) of the Tribunals, Courts and Enforcement Act 2007 to reconsider the appeal at a hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Coutts.
- (ii) The parties to serve all further documentary material on which they intend to rely not later than 7 days before the date of hearing. In particular, the Respondent to serve copies of all the documents submitted with the application and the Appellant to serve evidence of the Appellant's financial and personal circumstances in Pakistan.

Deputy Upper Tribunal Judge Frances
26th November 2014