



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/44931/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10 March 2014

Determination Promulgated  
On 14 March 2014

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

MRS KANIZ ALI  
(No Anonymity Direction Made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: the appellant appeared, accompanied by her son but unrepresented  
For the Respondent: Mr S Whitwell a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Pakistan who was born on 14 July 1954. She has been given permission to appeal the determination of First-Tier Tribunal Judge Scobbie ("the FTTJ") who dismissed her appeal against the respondent's decision of 21 October 2013 to refuse to vary her leave to remain in the UK and to remove her by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.

2. The appellant came to the UK with her husband on a visit visa to visit and stay with their son and daughter-in-law. They arrived on 31 March 2013. Their visas were valid for a period from 14 March 2013 until 14 September 2013. He became unwell and applied for and has been granted permission to remain in the UK for medical treatment beyond the original period of his visa. This period of leave expires shortly, on 21 April 2014.
3. On 10 September 2013 the appellant applied for leave to remain with her husband so that she could look after him whilst he had psychiatric treatment. The respondent refused the application which had been made for a purpose not covered by the Immigration Rules. Her policy was to consider granting leave outside the Immigration Rules where particularly compelling circumstances existed. It was concluded that the appellant's circumstances were not such that such discretion should be exercised.
4. The appellant appealed and asked for the appeal to be determined on the papers which is what the FTTJ did on 15 January 2014. The appellant's then solicitors had submitted a bundle of documents.
5. The FTTJ found that the appellant's husband was suffering from a moderate depressive episode and was receiving private psychiatric treatment as an outpatient including medication. It was said that the appellant and her husband were living with their son and daughter-in-law who had to go to work during the day. The appellant's husband needed looking after and the appellant cooked for him. He needed support going up and down the stairs.
6. The FTTJ concluded that on the evidence the circumstances were not so compelling that the respondent had failed to exercise her discretion in a reasonable manner. In relation to the Article 8 grounds the FTTJ said, in paragraph 17; "Further, there is a suggestion that the Article 8 rights of the appellant are breached by this decision. As the appellant's husband is going to return to Pakistan as soon as his treatment is over I conclude that there could be no prospect of an Article 8 argument succeeding."
7. The FTTJ held that the respondent's decision was in accordance with the law and the Immigration Rules and that the Appellant's Article 8 human rights would not be infringed. He dismissed the appeal. The appellant appealed, raising Article 8 grounds only. The judge who granted permission to appeal was of the view that the FTTJ had dealt with the Article 8 grounds cursorily without proper reasoning and that this was an arguable error of law.
8. The appellant attended the hearing before me accompanied by her son. He spoke good English and told me that his mother was unable to do so. Her first language was Urdu. He said that she wanted him to speak for her. I explained the purpose of the hearing and said that I would assist them as far as I could whilst being even-handed to both sides.

9. I discovered that there had been a Rule 24 response from the respondent which had not reached the Tribunal file. Mr Whitwell gave me a copy. The respondent argues that whilst the FTTJ's consideration of the Article 8 grounds might have been superficial this was not a material error which impacted on the outcome. That was the position which Mr Whitwell took in his submissions. He provided me with a copy of the Home Office guidance in relation to "Visitor for Private medical treatment" valid from 26 September 2013 and the determination in Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC).
10. The appellant's son told me that his father had not applied for further leave to remain and that he would be leaving the UK with the appellant before his visa expired on 21 April 2014.
11. I find that the FTTJ erred in law by failing to give any or sufficient reasons for dismissing the appeal on Article 8 human rights grounds. There may not been a great deal of evidence but there were factors which should have been assessed. I informed the parties that this was my decision. Through her son the appellant informed me that all that she wanted was to be able to stay here with her husband until he left the country which would be before 21 April 2014. His last appointment with the psychiatrist was on 15 April 2013. He had not applied for an extension. I reserved my decision.
12. There has been no appeal against the respondent's decision to refuse to exercise her discretion in the appellant's favour or the FTTJ's conclusion that this should be upheld. The only appeal has been on Article 8 human rights grounds. The evidence before the judge included all that was in the respondent's bundle including witness statements and a bundle submitted by the appellant's then solicitors. This included a witness statement from the appellant, the stamp in her husband's passport recording his extended leave to remain, a letter from the psychiatrist treating her husband, a copy of her passport and her husband's passport, copies of her son and daughter-in-law's passports, a letter from her son, documentary evidence as to the property in Pakistan owned by the appellant and her husband and evidence as to the car they owned Pakistan.
13. I find that the appellant and her husband have a family life with their son and daughter-in-law in this country but do not wish to continue this by living here. On the contrary, they wish to return to Pakistan as soon as the husband's medical treatment is completed. It is anticipated that this will be very soon, before his visa expires on 21 April 2014. I also find that the appellant and her husband have a limited private life in this country. I find that their main private and family life is with each other and others in Pakistan which is where they want to live together. As long as they comply with the existing terms of their visas, and there is no indication that they do not, there should be nothing to prevent them making future visits to their son and daughter-in-law in this country. I find that it was understandable for the appellant to want to remain in this country with her husband for the duration of his medical

treatment. Had the evidence been clearer, perhaps accompanied by medical evidence explaining that there were good medical reasons why the appellant needed to look after her husband, the appellant might have been able to persuade the respondent that this was a case where particularly compelling circumstances existed and that leave should be given because there were genuine compassionate reasons. Such evidence would also have assisted the appellant in relation to her Article 8 grounds. On the evidence before the FTTJ it is not clear why the appellant's husband's condition is such that he cannot be left alone or why he needs help to go up and down stairs. Whilst the appellant's son gives information about his employment it is not clear why their daughter-in-law, who is self-employed, cannot assist.

14. As the appellant and her husband have their main private life and family life together in Pakistan and they wish to return very shortly I find that, whilst the proposed removal will be a limited interference by a public authority with the exercise of the appellant's right to respect for her private and family life such interference will not have consequences of such gravity as potentially to engage the operation of Article 8. The threshold is not a high one but it is not crossed in the circumstances of this appeal. Even if I had concluded otherwise and that all but the last of the Razgar tests was satisfied I would have found that balancing the public interest against the circumstances of the appellant and her family the respondent had established that the interference was proportionate.
15. I find that whilst the FTTJ erred in law the error was not such that the decision should be set aside. Had the FTTJ properly considered the Article 8 grounds the decision would inevitably have been the same.
16. I uphold the FTTJ's decision to dismiss the appeal.
17. Very rarely do I make a recommendation. If the appellant and her husband do as they say they intend to do and leave the UK before his visa expires on 21 April 2014 I consider that it would be unreasonable and unnecessary for the respondent to take steps to remove the appellant before then. I hope and recommend that this should not be done.

Signed  
Upper Tribunal Judge Moulden

Date 11 March 2014