



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

Appeal Numbers: IA/26949/2014  
IA/26952/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 December 2014**

**Determination  
Promulgated  
On 20 January 2015**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MRS HINA BATOOL  
MR ALI KAUSAR RIZVI**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr E Waheed, Counsel, instructed by Saj Law Chambers

For the Respondent: Miss C Johnstone, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants are Pakistani citizens and are wife and husband respectively. The second appellant is a dependant of the first. They seek to appeal against the decision of the respondent dated 12 June 2014, refusing to vary their leave to remain in the United Kingdom and to remove by way of directions under Section 47 of the 2006 Act.

2. The first appellant was issued with a student visa valid from 12 May 2011 until 15 September 2012. She arrived in the United Kingdom on 29 May 2011 with her dependent spouse. On 11 September 2012 she applied to extend her leave as a student and was granted leave from 25 January 2013 to 28 February 2014. On 26 February 2014 the appellant applied for leave to remain outside the Immigration Rules on the basis that to remove her to Pakistan in her present precarious state of health would be to expose her to a life threatening situation such as to engage Article 3 of the ECHR.
3. The respondent's Reasons for Refusal Letter is dated 12 June 2014 and cites six medical reports dated from 6 December 2012 to 25 February 2014. The medical condition of the first appellant is noted and it is considered by the respondent as can be seen, particularly from paragraphs 7 to 9 of the decision letter, that treatment would be available to the appellant in Pakistan. It was not considered that there was any matter that was exceptional or compelling in her circumstances which would preclude her removal.
4. The appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Adio on 22 September 2014. The appeal was dismissed both in respect of the Immigration Rules and on human rights grounds.
5. The appellant sought to appeal against that decision. Permission to do so was granted on 17 November 2014. Thus the matter comes before me in pursuance of that grant.
6. Mr Waheed, who represents the appellant, relies upon the grounds of appeal which in effect makes two submissions of challenge to the determination of Judge Adio. The first challenge is to the effect that the appellant is suffering from a particularly rare and potentially dangerous condition that requires careful monitoring and expert handling. It contends that the Judge failed to understand the nature of that condition, as indicated by the remark that the appellant was not suffering from a life threatening condition.
7. The second submission being that there would be no adequate treatment for that condition in Pakistan and that to remove her from the security of her treatment in the United Kingdom would expose the appellant to a real risk of harm of the severity as to engage Article 3 of the ECHR.
8. In support of the first proposition Mr Waheed sought permission to produce an up-to-date medical report dated 19 December 2014 from the University College London Hospital. It is to be noted that a request for an up-to-date medical report was refused by Judge Adio but it seems to me that it would be entirely fair to have regard to all medical reports on this matter.

9. It is to be noted that the appellant has a diagnosis of vascular ehlers danlos syndrome and that investigation led to a diagnosis of duplicated uterus, small kidney, and abdominal aortic aneurysm and splenic artery aneurism. There was before the First-tier Tribunal a bundle of documents filed on behalf of the appellant including her witness statement and a number of medical reports, particularly one from Dr Neeti Ghali who is a consultant in clinical genetics. That clearly sets out the nature of vascular EDS which speaks of the examinations that have been carried out in relation to that condition. The report contains details of the condition.
10. Essentially the most significant implications are that of the fragility of the blood vessels, giving an increased risk of developing aneurisms in the blood vessels and the perforation of blood vessels which could be life threatening. There is also a significant risk to hollow organs such as the bowel or womb, which are at an increased risk of rupture, which if so ruptured would cause major complications.
11. The report concludes as follows:-

“With regards to Mrs Batool’s health, she is being conservatively managed for her aneurisms by the vascular surgeons as surgery is avoided if at all possible.”
12. Essentially it is important in this condition that the blood pressure is monitored and kept under strict control. The appellant has been referred to a cardiologist at the heart hospital in London which specialises in inherited cardiac conditions such as vascular EDS.
13. Stress is clearly an important factor in relation to blood pressure.
14. The report concludes as follows:-

“I am not aware of special expertise into vascular EDS being available in Pakistan. However, there will be cardiologists who would be aware of the condition but may not be very familiar in managing the condition as it is rare.”
15. The more recent report adds very little to what has gone before. The main problem with the aneurisms being that they could suddenly rupture, causing bleeding. If that happened she would require specialist surgery. The medication which the appellant is taking to monitor her conditions is set out with the statement that there must be a meticulous control of her blood pressure because if that becomes too high then that would put her at an increased risk of vascular rupture.
16. It is said that the life expectancy of patients with vascular EDS in general is significantly shortened and that limited access to health care, particularly expert vascular surgery, in the case of emergency, might well have an impact on her life expectancy.

17. The author of the report of 19 December 2014, Professor Elliot, has no knowledge of health care facilities in Pakistan and indicates that the appellant would require highly specialised care in the event of emergency. Stress and depression would be likely to have adverse consequences for her. Long journeys are not recommended.
18. It is clear from the determination that Judge Adio has set out in considerable detail the nature of the condition as described in the reports. Specific mention is made in paragraph 20 of the latest medical record of February 2014 and a recognition that the appellant has an extremely rare condition.
19. In the report of 25 February 2014 reference was made to the last correspondence being received from the cardiologists in July 2013. The author, Dr Ghali, indicated that he had met the appellant on 8 February 2013 and offered annual follow-up clinic. She was last seen in clinic on 24 May 2012.
20. It is suggested in the grounds of appeal that the Judge misunderstood the frequency with which the appellant requires to be monitored. It is said it is not annually but four times a year.
21. Be that as it may, the evidence that is presented, is that the appellant has a potential dangerous condition which is at present stable; does not require current medical intervention but rather it is carefully monitor both as to her blood reassure and to the condition as a whole.
22. Criticism is made of the Judge for indicating that the appellant is not suffering from a life threatening condition. Such a comment is of course to be seen within the context of paragraph 26 of the determination that the appellant has not been referred for emergency medical treatment. Essentially the medical role at present is a monitoring one with the medication to control blood pressure.
23. I do not find therefore that the Judge has misunderstood the nature of the condition in the determination.
24. The next issue is treatment in Pakistan. Clearly that is relevant to the appellant's return to Pakistan. The position of the respondent, both in the Reasons for Refusal Letter and indeed in the response to the grounds of appeal under Rule 24, is that there is medical treatment available to the appellant in Pakistan. The respondent has set out in some detail clarifying her position so far as the potential for treatment is concerned.
25. The appellant has adduced little evidence to the contrary. It is recognised that the heart hospital in London has the expertise to monitor and if need be react to the illness. Little evidence has been adduced that such expertise is not otherwise available elsewhere, particularly in Pakistan which has a sophisticated medical establishment. As Miss Johnstone, who represents the respondent indicated, the fact that Dr Ghali is not aware of

specialist expertise into vascular EDS being available in Pakistan is not the same as saying that there is no expertise available in Pakistan for that condition.

26. Mr Waheed relies upon the latest report which indicates that part of the medication which is set out in that report may not be available in Pakistan and that may be a cause of concern. However there is a paucity of evidence available as to what is or is not available in Pakistan to help with the monitoring of the appellant's conditions. Such evidence that has been presented, mainly by the respondent, would tend to indicate that there is treatment that is available. It is to be borne in mind, as canvassed before the First-tier Tribunal Judge, that the medical treatment would be paid for through the kind offices of the appellant's sister who is also a general practitioner in the UK.
27. Thus the financing of medical treatment whether in the UK or in Pakistan perhaps is less of an issue than the availability of the medication and/or emergency treatment if required. Miss Johnstone contends that such treatment is available if required outside the United Kingdom and relies understandably upon that which has been expressed by the respondent in the Reasons for Refusal Letter. The Judge at paragraph 7 notes that particular matter.
28. Mr Waheed indicates that paragraph 31 of the determination the Judge is incorrect in speaking of an annual regular follow up when in fact the appellant requires monitoring four times a year.
29. For my part it is difficult to criticise the Judge for that conclusion bearing in mind the last paragraph of the letter of Dr Ghali namely "We offer annual follow-up on our patients with vascular EDS. Mrs Batool was last seen in clinic on 24 May 2013."
30. Whether or not she is requires monitoring and check up once a year or four times a year, the reality of the situation is that she is currently not undergoing treatment for her condition other than the strict control of her blood pressure. Miss Johnstone contends that there are cardiologists in Pakistan who are familiar with the condition and are perfectly capable of monitoring that situation and there is some support for that conclusion in the Reasons for Refusal Letter.
31. I do not find the Judge to be in error in the approach taken within the determination.
32. A further challenge that is made to the determination and the grounds is essentially that the Judge failed to uphold the appeal under Article 8 in the sense of the importance for the appellants of the family in the United Kingdom. She and the second appellant have no children of their own and are very much attached to her husband's brother and his family. Not only do they accommodate them and look after their moral and physical welfare. There are two children to that couple and both the appellant and

her husband are very attached to them and the family. In Pakistan the appellant has her parents who are old and retired. There is no other family other than in the UK. Her husband has two brothers living in the United Kingdom and the appellant also has a brother living in the United Kingdom. Thus it is argued that the primary support for the appellant and her husband lies in the United Kingdom. Such support is both necessary for their economic and emotional wellbeing as well as being helpful to minimise stress and difficulty. It is said that the Judge failed to take those matters into account in the balancing exercise that was to be conducted.

33. Mr Waheed also submitted that it was very relevant to the issue of proportionality that finance was available for treatment. The appellant would not be a burden upon society and therefore there was no good reason why it was in the public interest that they should be removed from the jurisdiction.
34. Miss Johnstone submits that the maintenance of a system of immigration policy is an important reason and justification for removal. The appellant came to the United Kingdom with limited leave and now seeks to remain on compassionate grounds. She submits that there are no compassionate or compelling grounds that would outweigh the proper exercise of immigration control. The appellant does not meet any Immigration Rule and therefore, in the absence of any compelling and exceptional circumstances, there is no reason why she should not return to Pakistan.
35. The Judge recognised in paragraph 29 of the determination that the illness was a compelling circumstance not sufficiently recognised under the Rules but concluded in paragraph 31 that it is a proportionate decision because of the ability to manage that condition.
36. Applying the reasoning in **Gulshan** it is difficult, without more, to see what other than the nature of the illness would amount to compelling circumstances outside the rules. Accepting the family context as set out by the appellant such was enjoyed on a relatively short time frame, when the appellant was permitted to come to the United Kingdom on a different basis to the one from which she now seeks to remain. Reliance is placed upon family life but the quality of the same is not such as to engage the **Kugathas** test. There is little evidence of emotional dependency other than the companionship to be expected in a family setting. It is to be noted that both the appellant and her husband seemingly lived in Pakistan without difficulty until relatively recently when she arrived in the United Kingdom in May 2011.
36. Although it would have been desirable for the Judge to have looked in a little more detail as to the family situation of the appellants it is not of such quality, as I so find, as would have made a material difference to the outcome in relation to Article 8.
- 37 Overall I there to be no error of law in the assessment of the claim either under Article 3 or 8 of the ECHR.

38. In the circumstances therefore the appeal before the Upper Tribunal is dismissed.
39. The original decision shall stand namely that the appeal is dismissed in respect of Articles 3 and 8 of ECHR.

Signed

Date **23 December 2014**

Upper Tribunal Judge King TD