



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

Appeal Number: IA/02934/2015

**THE IMMIGRATION ACTS**

**Heard at Field House, London  
On 29 February 2016**

**Determination  
Promulgated  
On 12 April 2016**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MB**

Respondent

**Representation:**

For the Appellant: Ms N Willcocks-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Mr Liam Doyle of M&K Solicitors

**DECISION AND REASONS**

1. This appeal is not subject to an anonymity order by the First-tier Tribunal pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Neither party has invited me to make an anonymity order pursuant to rule 14 of the Tribunal

Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) and I have not done so.

2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge ) allowing the respondent's appeal against a decision taken on 2 September 2014 to refuse an application for leave to remain under Article 8 of the ECHR and to remove the respondent to Pakistan.

### **Introduction**

3. The respondent is a citizen of Pakistan born in 1953. She married SA in 1971. It was an Islamic marriage. He is a UK citizen living in the UK since 1966. SA also married RA in the UK and she lives with him. The appellant and SA have three children, Naeem (born in 1975), Nadeem (born in 1981) and Aneela (born in 1993). They are all UK citizens living in the UK. The respondent came to the UK as a visitor on 1 September 2012 and then made various applications for further leave to remain. The respondent no longer wishes to live in Pakistan and her children support her in the UK. She has maintained her marriage through visits and telephone contact. She has never lived with SA. There would be no one to support her in Pakistan. She suffers from dizziness and memory loss.
4. The Secretary of State accepted the respondent's identity and nationality but concluded that she did not meet the requirements of the Immigration Rules and there were no exceptional circumstances to justify granting leave to remain outside the Rules.

### **The Appeal**

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing at Sheldon Court, Birmingham on 23 July 2015. She was represented by Mr Blundell, Counsel. The First-tier Tribunal found that there were no insurmountable obstacles to return given the absence of any intolerable harassment by her new mother in law, lack of proven ill health and the fact that the respondent had spent the vast majority of her life in Pakistan. However, the respondent had family life with SA and her adult children in the UK. Article 8 was engaged and it was not proportionate to require the respondent to return to Pakistan to make an application for entry clearance.

### **The Appeal to the Upper Tribunal**

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondent's relationship with her children went beyond normal family ties, failed to give adequate reasons in relation to Article 8, failed to give adequate reasons in relation to section 117B of the 2002 Act and failed to give adequate reasons for the finding that the respondent could not return to Pakistan on her own to make an application for entry clearance.

7. Permission to appeal was granted by First-tier Tribunal Judge Cruthers on 2 December 2015 on the basis that it was arguable that the judge erred in finding that the relationship with the adult children amounted to family life and it was not clear why the respondent could not return to Pakistan to make an application for entry clearance. All grounds were arguable.
8. In a rule 24 response dated 26 February 2016, the respondent's representatives submitted that there was considerable weight in counsel's submissions that the rules did not cater for the respondent to exercise the totality of her Article 8 rights. The judge gave full reasons for finding that the family life outweighed the public interest in removal. The public interest principles in section 117B do not cater for this situation where family life was enjoyed with adult children and her grandchildren. The relationship with her British husband was not formed when her immigration status was precarious. She had financial support. The judge gave more than adequate reasons in relation to the public interest. There was an extreme level of dependency upon UK family members. There was compelling evidence of family life. There was no sensible reason to insist on even temporary separation given the strength and quality of family life.
9. Thus, the appeal came before me

### **Discussion**

10. Ms Willcocks-Briscoe submitted that the judge had given inadequate reasons for finding that family life was established and the adverse circumstances in Pakistan. The findings at paragraph 66 of the decision indicate no poor health, previous use of family visit visas and no legitimate expectation to remain. The judge weighed up whether the respondent could return at paragraphs 69-72 but missed whether the respondent could return to make an application. She chose to enter as a visitor rather than apply in the correct category. At paragraph 77 the judge found that the respondent could not succeed under the Immigration Rules and then contradicted the findings at paragraph 66. The judge failed to consider that the respondent would continue to receive support in Pakistan and had returned to Pakistan many times previously. The current application was made on 8 April 2015 by which time the leave to remain had expired. The judge had used Article 8 as a general dispensing power. There was no basis for finding family life and the assessment outside the Rules was therefore incorrect.
11. Mr Doyle submitted that paragraphs 54 and 75-77 set out how the judge came to the findings regarding family life outweighing the public interest. The judge addressed each component of section 117B. The strength and quality of family life appears at paragraphs 14-17 and financial/practical support were dealt with at paragraphs 19-21. All of that led to the findings at paragraph 69 that the respondent had no close relatives in Pakistan. The family members are British citizens who could not go back to Pakistan to look after the respondent. Adequate reasoning was given. The respondent originally made an in time application but that was refused;

therefore the current application was made when the visit visa had expired. That was not fatal to consideration outside the Rules. There can be family life between adult siblings and the findings at paragraph 42 were properly open to the judge. The judge did consider the Rules first and was fully cognisant of R (on the application of Chen) v SSHD [2015] UKUT 189 (IAC), from paragraphs 65 and 76-77). The length and degree of family separation is important. The findings at paragraph 68 were open to the judge. The family say that the respondent suffers from forgetfulness and mobility problems. If a material error of law is found then there should be a de novo hearing to address new medical evidence.

12. Ms Willcocks-Briscoe submitted in response that there had been no cross-appeal against the findings at paragraphs 66-68. There is no requirement for further evidence and the decision could be remade on the basis of submissions.
13. I note that the judge found at paragraph 66 of the decision that the respondent had not proved that she suffered from poor health, any alleged harassment in Pakistan was not sufficient to preclude her return to Pakistan and that there were no insurmountable obstacles to return. The respondent had always been financially supported by SA and was regularly visited in Pakistan by SA and her sons. There was no reason why those arrangements could not continue. Those findings of fact have not been challenged by the respondent and form an unpromising backdrop for her Article 8 claim outside the Rules.
14. At paragraph 69 of the decision, the judge found that over the last three years the respondent had developed a close relationship with her adult children. She was supported financially by her sons. It was reasonable to conclude that she was financially, emotionally and practically dependent upon them. The relationship disclosed more than the normal emotional ties and there was a far greater degree of dependency which went beyond the irreducible minimum of family life. I find that those conclusions are unsupported by the evidence. The judge found that the respondent was not in poor health and had previously been supported by SA. The mere existence of financial, practical and emotional support is not sufficient to constitute family life with adult children. Adult children routinely provide such support to their parents. The judge did not identify why those elements were so compelling in this case to merit a finding of family life between the respondent and her adult children. I find that the judge has failed to give adequate reasons for that key finding of fact and that is a material error of law.
15. The judge found at paragraph 77 of the decision that the respondent had family life in the UK and a right to remain in the UK. On that basis, the requirement to return to Pakistan to apply for entry clearance was disproportionate because the might be several months of disruption and the respondent could not return on her own. I find that several months of "disruption" is not a compelling reason to grant leave outside the Rules. No reasons were given as to why the respondent could not return on her

own. In accordance with Chen, it is for the respondent to prove that temporary separation would interfere disproportionately with protected rights. The judge found that there were no health issues and no other insurmountable obstacles to return. The respondent had accommodation and financial support in Pakistan. There was no proper factual basis for the finding that return to make an entry clearance application would amount to disproportionate interference. That is a further material error of law.

16. Thus, the First-tier Tribunal's decision to allow the respondent's appeal under Article 8 involved the making of an error of law and its decision cannot stand. I have not found it necessary to consider the remaining grounds of appeal.

### **Decision**

17. Mr Doyle invited me to order a rehearing in the First-tier Tribunal if I set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal. I am not persuaded that the findings of fact are sufficient to remake the decision on the basis of submissions only. I take into account the possibility of further medical evidence.
18. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined *de novo* by a judge other than the previous First-tier judge.

Signed



Date 28 March 2016

Judge Archer

Deputy Judge of the Upper Tribunal