



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/12860/2016

THE IMMIGRATION ACTS

Heard at Field House
On 1 June 2018

Decision & Reasons Promulgated
On 16 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

MUZAMMIL [J]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza instructed by Marks and Marks Solicitors
For the Respondent: Ms Z Kiss, Home Office Presenting Officer

REMITTAL AND REASONS

1. The Appellant is a citizen of Pakistan born on 29 September 1949. She last entered the United Kingdom as a visitor on 17 June 2015. The Appellant is a widow. She came to the United Kingdom to grieve with her son who is settled here. The Appellant also has two daughters in the United Kingdom. They are married and live with their respective husbands and children. The daughters are not settled and have no leave to remain in the United Kingdom.

2. The Appellant applied on a human rights basis for leave to remain on 11 December 2015. Essentially her claim is that she is a widow in ailing-health, wheelchair bound and unable to live alone in Pakistan. She has an established family life and her son provides her with physical, emotional and financial support. The application was refused on 3 May 2016 and the Appellant exercised her right of appeal.
3. The appeal was heard before Judge of the First-tier Tribunal Ghani and was dismissed in a decision promulgated on 20 July 2017. At the hearing of the appeal Judge Ghani heard evidence from the Appellant and her son. The appeal of the Appellant was put on the basis of paragraph 276ADE of the Immigration Rules (the Rules) and again under Article 8 of the ECHR. Judge Ghani considered that there would not be very significant obstacles to the Appellant's integration into Pakistan if she was returned and found that her daughters could look after her there, and where she could obtain medical treatment. She could also continue family life with her son in the United Kingdom through visits. Accordingly, the appeal was dismissed.
4. The Appellant applied for permission to appeal, claiming that the decision was inadequately reasoned and failed to adequately address the evidence and issues.
5. Permission was granted by First-tier Tribunal Martins on 11 January 2018 in terms that the "assertions made in the grounds are evident on the face of the decision."
6. At the hearing before me I heard brief submissions from both representatives. Mr Raza, while acknowledging that his was not a "perfect case" made submissions in-line with the grounds. Essentially, he submitted that, notwithstanding the inconsistencies in the evidence, it was not disputed that the Appellant is a widow with health problems and was wheel chair bound. The Appellant was reliant on her son in the United Kingdom and, in the circumstances, he submitted that the decision was inadequately reasoned. The judge failed to properly consider the medical evidence and erred in concluding that the Appellant could be joined by her daughters. Ms Kiss observed that this was not a "perfect decision" and highlighted the inconsistencies in the evidence. Ms Kiss submitted that the findings were sufficient.
7. Having considered the submissions, I formed the view that the central submissions advanced by Mr Raza were correct. I announced my decision at the hearing that I was satisfied that the judge materially erred in law.
8. In an otherwise reasoned decision, I find that the judge's consideration of the Appellant's claim under the Rules together with his consideration of the Appellant's circumstances outside of them led to a flawed assessment of the question of proportionality.
9. While this is a human rights appeal, the question of proportionality is to be viewed through the lens of the Rules. The judge thus correctly began his assessment by considering the relevant Rule in play. In this case that was paragraph 276ADE(1) which required the Appellant to show inter alia that there would be "very significant obstacles" to her integration in Pakistan in the event of a return.

10. The judge concluded that the Appellant did not meet the requirements of the Rules at [19] and then factored that into his assessment on proportionality at [22]. What is in issue, first, is whether the judge adequately considered the claim under the Rules. The judge's assessment is contained in two sentences at [19] and states thus:

"I find that the Appellant having lived in Pakistan for the majority of her life, is familiar with the culture and the language. I do not find that there would be very significant obstacles to her integration into Pakistan if returned."
11. The judge then proceeded to consider whether there were any exceptional circumstances.
12. I agree with Mr Raza that the above is the totality of the judge's consideration under the Rules. While the factors identified by the judge are relevant to the issues under the Rules, the consideration is evidently insufficient on the facts of this case. The concept of integration is a broad one and the judge was required to do much more and make an evaluative judgement based on all the facts including the factors identified by Mr Raza which were not considered, see: SSHID v Kamara [2016] EWCA Civ 813. This, I find, he failed to do. While the threshold under the Rules is high, I cannot be satisfied that had the judge considered all relevant factors that the outcome would have been the same.
13. I am also concerned about the judge's treatment of some of the issues raised under Article 8 of the ECHR.
14. First, the judge concluded that the Appellant's daughters could choose to leave the United Kingdom and return to Pakistan to care for the Appellant. The judge rejected the claim that culturally it would not be feasible for the daughters to care for the Appellant "as the primary duty of a child is to look after his or her parent". While culturally there may be a strong sense of duty for a child to look after its parent(s), that cultural expectation is not determinative of whether a child is in fact able to do so. Other cultural factors may become relevant depending on the gender of the child and the child's circumstances.
15. Here the judge was dealing with two married daughters with children. While the daughters had no leave to remain in the United Kingdom the evidence was that they formed part of their husband's household and would not therefore be able to care for the mother. No consideration appears to have been given to the evidence that the daughters were married, formed part of their husband's households and had children to care for and the status of the husbands/children is unclear. Such factors were relevant to the question of whether the daughters could return to Pakistan with their mother.
16. Second, I also agree with Mr Raza that the judge failed to evaluate the extent of the emotional ties developed between the Appellant and her son in the United Kingdom at [22]. That evaluative exercise would have been relevant to the question of family life and proportionality which has also not been adequately undertaken in this case.

17. The judge having, in my view, failed to adequately consider and assess the evidence and issues in this case, erred in law.
18. Having reached that decision, the parties invited me to remit the appeal to the First-tier Tribunal. In the circumstances, I consider that this is the appropriate course. There is a need for a rehearing on all issues.

Notice of Decision

I set aside the decision made by the First-tier Tribunal.

For the reasons set out above, the appeal is remitted to the First-tier Tribunal for rehearing on all issues before a judge other than Judge Ghani.

No application was made for an anonymity order and no such order is made.

Signed

Date 25 June 2018

Deputy Upper Tribunal Judge Bagral