



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/04974/2019

THE IMMIGRATION ACTS

Heard at Field House
On 9 October 2019

Decision & Reasons Promulgated
On 23 October 2019

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

SHAMIM RASHID
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Howard of Fountain Solicitors (Walsall)

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Pakistan. She appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision on 18 February 2019 to make a deportation order.
2. The appellant was born in 1969 in Pakistan and is a citizen of Pakistan. She claims to have come to the United Kingdom some 30 years ago, and she came unlawfully using a British passport and a false identity. Her three adult children are British citizens as are her grandchildren.

3. The appellant pleaded guilty at Snaresbrook Crown Court on 28 February 2018 to using a false instrument, the false passport, with intent. She was sentenced to two years' imprisonment for that offence and this led to the decision to make the deportation order against her.
4. The judge noted that the appellant, being a widow, cannot meet the requirements of paragraph 399(b) of the Immigration Rules. The evidence did not show that she could be said to have a parental relationship with any of her grandchildren, and her children are all adults. In the circumstances the appellant could not meet the requirements of paragraph 399(a).
5. To succeed under the Immigration Rules, the judge concluded that the appellant would have to show that she met the provisions of paragraph 399A. The requirements of this paragraph are cumulative.
6. On the basis of the appellant's claim to have entered the United Kingdom in approximately 1994, she has been in the United Kingdom for 25 years. However she has not been in the United Kingdom for most of her life let alone lawfully, since she was born in 1969.
7. Paragraph 399A(b) requires that the appellant should be socially and culturally integrated into the United Kingdom and under paragraph 399A(c) that there would be very significant obstacles to her integration into the country to which she would be deported. The judge noted that although she could not meet the terms of paragraph 399A, her circumstances and ability to meet these parts of the Rules was relevant as it informed an assessment as to whether there were "very compelling circumstances over and above those described" in paragraph 399A that would justify allowing the appeal.
8. The judge noted the appellant's guilty plea and although the judge in his trial had accepted that her sister and husband were involved and she might not have had much say in events, it was clear that she was sentenced on the basis that she knew from the outset what was going on with regard to the use of the stolen British identity. The judge had noted that the appellant had little involvement with mainstream British society looking after the home and family, but after her husband's death in 2008 she had control of her circumstances and she had declined to have a trial of the issue as to whether she was under the influence of other males of the family. Using the false identity she had obtained over £176,000 in benefits of various kinds. Her actions involved repeated false statements to the benefits system.
9. The judge noted that her witness statement placed the blame squarely on her late husband and protested complete ignorance of any wrong doing and that applied also to her continuing to claim benefits following his death. At paragraph 17 of her statement she said she was not aware she had committed any fraud but at paragraph 19 she accepted responsibility for her actions.

10. The judge could find no basis for justifying going behind the observations made by the judge at her trial, and in the circumstances considered he had to take it that the appellant was aware of what was done to get her into the United Kingdom and was knowingly complicit in what took place and, after her husband's death, chose to continue with the fraud.
11. The judge said that with regard to the appellant's integration he took it as a requirement that she should be able to demonstrate an ability to participate in wider society and not within the confines of her home, family and members of the Pakistani diaspora. Central to this he thought was her ability to speak English at least sufficiently to be able to access relevant services, to go shopping and the like with the need for an interpreter.
12. The judge considered the fact that the appellant gave evidence in Mirpuri would go not only to her ability to integrate into Pakistan but also would indicate that after 25 to 30 years in England her English was not good. This was confirmed by paragraph 9 of her witness statement and her need for the assistance of relatives. The witness statements in support, he said were from her children and wider family and went more to her role in the family than supporting a claim that she had integrated in the wider community. In the circumstances he considered that the evidence did not show that she could be said to have integrated into the UK socially or culturally.
13. With regard to obstacles to her integration into Pakistan, as he had noted she still preferred to communicate in Mirpuri and that was a fact which would assist her. Considerations under this aspect he considered really turned on her health and the level of support she would need and her ability to access it in Pakistan.
14. In her witness statement she had referred to a diagnosis and to her health deteriorating whilst she was in prison and that she relied on her children for emotional support and would not be able to live in Pakistan without them.
15. With regard to medical evidence, there was evidence from 7 September 2015 regarding a minor blood disorder but no suggestion that this could have any implications for her. There was reference in the letter of 26 May 2016 to her liver condition and that treatment was available and there was no history of note. There was a letter of 4 June 2018 concerning a diagnosis of depression and anxiety and this was directly related to the deportation proceedings, there was no suicidal ideation and no suggestion that any treatment was required or being prescribed.
16. Her health records were provided which covered the period from January 1995 to date and included reference to the liver complaint and knee osteoporosis and entries for low mood and anxiety state NOS from April 2018. The judge considered that what she did experience was a series of ailments of varying sorts all of which had been dealt with and had no long-term consequences for her.

17. The most recent medical letter was dated 4 April 2018. There was a diagnosis of anxiety and in the notes it was suggested that the appellant had collapsed in court after hearing bad news, which the judge presumed to be related to her upcoming sentencing hearing. There was no evidence to show what if anything had been done with regard to a recommended review. She had attended the hearing in a wheelchair but there was no medical evidence to explain why that was needed or if there was an underlying condition. The evidence did not show a significant problem and there was continuing treatment.
18. As regards her return to Pakistan the evidence was from her and her family that she had no relatives there. The evidence did not show that she needed help with performing daily tasks or that she had long term healthcare needs that could not be met in Pakistan. If she did need daily assistance there was no evidence that such assistance was not available or would be unaffordable in Pakistan.
19. The judge accepted from the witness statements in support of the appellant that she had played an important role in family life in the United Kingdom and was close to her family here. He accepted that she would miss her family if deported and she would not receive the physical support that they provided in the UK as matters stood. He did not accept that she would be without financial support as the money spent on her support in the United Kingdom could be remitted for her use in Pakistan where it would go further. As he had noted, there was no evidence to show that any treatment she might need would not be available in Pakistan.
20. There was no evidence that she had taken steps to address her offending behaviour and he could not find that she was not at risk of reoffending. She could not meet the provisions of paragraph 399A and the evidence did not show that there were very compelling circumstances beyond the provisions of that paragraph. The appeal was accordingly dismissed.
21. The appellant sought and was granted permission to appeal, on the basis that it was arguable that the judge had failed to consider adequately the evidence of the witnesses who attended the hearing as to the ability of the appellant to reintegrate upon her return to Pakistan after 30 years absence, when she would return as a widow.
22. At the hearing Mr Howard adopted and developed the points made in the grounds. There was a question as to whether adequate consideration had been given to the evidence of the six witnesses as to whether the appellant could reintegrate back into Pakistan. She was a widow who had been in the United Kingdom for over 30 years. The evidence of these witnesses was clearly relevant.
23. In his submissions Mr Lindsay argued that it was unclear from the letters or statements how the witnesses said they had come by the knowledge and experience about difficulties on return. They were British citizens and there was no indication of any recent direct or indirect knowledge of the country situation in Pakistan for a

person with the appellant's characteristics. It was therefore not probative of the issue concerning the situation facing the appellant on her return. The judge could not conclude that there was a real risk of difficulties on return.

24. The judge had in any event clearly considered the witnesses' evidence as could be seen at paragraphs 23 and 24 of his decision. He had not just considered her role in the family but also referred to obstacles to integration into Pakistan. The skeleton argument before the judge referred to her being at risk on return but this was not particularised. There was reference to the decision in SM but there was no issue as to the risk of persecution in her home area and SM made it clear that it would not usually be unduly harsh for an older woman to relocate to a city. Nor was there any evidence that there was no shelter place available for her.
25. There was no obligation to adopt a balance sheet approach as was argued in ground 2. The judge had considered all the relevant matters and not considered irrelevant matters.
26. Ground 3 overlapped with ground 1. It concerned medical evidence and return as a widow who had been in the United Kingdom for 30 years. The judge had properly considered the medical and other evidence.
27. By way of reply Mr Howard made the point that the witnesses had been asked when they were last in Pakistan. They were in a position to give an informal view. There was a gap in the judge's consideration as to whether the appellant could reintegrate into Pakistan, and the evidence of the witnesses was relevant to that. There was a lack of findings in a very material aspect of the case.
28. I reserved my decision.
29. The key issue in this challenge to the judge's decision is that of the claimed failure on the part of the judge to take into account the evidence of the six witnesses with regard to the appellant's social and cultural integration into the United Kingdom and the issue of very significant obstacles to her integration on return to Pakistan. Grounds 2 and 3 raise lesser matters, and are in essence subsumed within ground 1 though I will refer to them both separately after considering ground 1.
30. I have set out above what the judge had to say about the evidence of the witnesses. The statements are to be found at tab B of the bundle. Fatimah Rashid who is the appellant's daughter refers to the fact that her mother being removed from the United Kingdom will not only distance her from her family but will make her health condition worse than it already is as there will be no-one to support her and going to Pakistan will be dangerous for her especially as she is now a widow and people like her are attacked. Pervaz Khaliq, who is the appellant's niece said that sending her aunt to Pakistan would condemn her to a life without any support, family life or protection from the harsh reality of Pakistan life and she has no place to live and all her family who are close to her are in the United Kingdom. Also Amina Rashid who

is a daughter of the appellant said that if the appellant were deported back to Pakistan she would not be able to cope mentally as she did not have a support system there and no close family and she would be made to suffer and would be abused as she would be alone and it was not safe for a lone woman in Pakistan. In addition the appellant's sister Kaneez Akhtar referred to the appellant suffering in Pakistan as there was no-one there for her and no house to live in and her life would end in misery and her health was deteriorating and she has her children in the United Kingdom to take care of her otherwise she will be left to suffer. Mohammed Ibrahim Khan who is a nephew of the appellant said that sending her back to Pakistan could make her health condition worse by not being able to live a family life and she has no family members in Pakistan who would care for her like her family in the United Kingdom. In a further statement Riffat Khaliq refers to the fact that a woman carrying the title of a divorcee and having been through prison would be seen as a curse and a disgrace to society, and Samina Bashir also said that she believes the appellant has no future in Pakistan as she has no family abroad, her parents are deceased, her health has deteriorated drastically and she is in a position where she requires support from her family.

31. In my view it cannot properly be said that the relevant issues were not considered by the judge. At paragraph 23 of his decision he noted the witness statements from the appellant's children and wider family and what they said about her role in the family, a point that he also referred to at paragraph 31 and the impact on the appellant of missing her family if deported and the lack of physical support that they provide in the United Kingdom. He also referred at paragraph 24 to the fact that she still prefers to communicate in Mirpuri rather than English. As noted above also, he gave detailed consideration to the medical evidence and noted that there was nothing of any significance precluding the appellant's return.
32. I do not consider, considering these points as a whole, that the judge can be said to have erred in law in his consideration of the issue of very significant obstacles to the appellant's return to Pakistan. The letters which in broad terms were taken into account refer to the difficulties that the appellant might experience in Pakistan and undoubtedly it is the case that having lived in the United Kingdom for 30 years and being cut off from her family who are living in the United Kingdom it would be difficult for her. But it was fully open to the judge, having considered the evidence as he did, to conclude that the evidence before him did not show the existence of very significant obstacles to the appellant's integration on return to Pakistan nor did it show that she was socially and culturally integrated into the United Kingdom.
33. As regards ground 2, where it is said that the judge appeared to accept that but for the conviction removal would not have been considered on any basis and this implied a strong Article 8 basis to the claim, this has to be seen in the context of the fact that there is a conviction and that the judge carried out a proper balancing exercise. It is clear that a balance sheet approach is not required as long as the relevant issues have been considered, and in my view they were. Contrary to what is contended in ground 3, I consider the medical evidence was adequately considered

and likewise the fact of her return as a widow and having been in the United Kingdom for 30 years were also addressed. In conclusion therefore I consider that it has not been shown that the judge erred in law in any respect and his decision dismissing this appeal stands.

No anonymity direction is made.



Signed

Date 21 October 2019

Upper Tribunal Judge Allen

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.



Signed

Date 21 October 2019

Upper Tribunal Judge Allen