



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

Appeal Number: HU/17452/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 28th June 2019**

**Decision & Reasons Promulgated
On 17th July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**MR AZHAR HUSSAIN PATHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L Appiah, instructed by Inayat Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan whose date of birth is recorded as 19th March 1976. He appealed the decision of the Secretary of State dated 7th August 2018 refusing his application of 11th January 2017 for leave to remain in the United Kingdom on the basis of family and private life. His appeal was heard by Judge of the First-tier Tribunal Zahed sitting at Hatton Cross on 25th January 2019. The appeal was dismissed on all grounds.
2. Not content by that Decision, by Notice dated 4th April 2019 the Appellant made application for permission to appeal to this Tribunal. The grounds

are brief. In short it was submitted that the judge had not adequately considered the evidence going to the Appellant's care needs and that the findings in relation to the ability of the Appellant's half-sisters to care for him were erroneous. Still further there was a failure adequately to have regard to Section 117B of the 2002 Act and finally that in assessing family life the judge did not have regard to the Appellant's relationship with his minor nephews.

3. During the course of the hearing Ms Appiah sought to add to the grounds on the basis that the judge had not given sufficient weight to the inability of the Appellant properly to communicate his evidence which was to be contrasted with paragraph 9 of the Decision and Reasons where the judge had noted that, "The Appellant adopted his statement and gave evidence before me ..." but Mr Walker for the Secretary of State consented to the application and indeed I am grateful to him for informing me that his colleague's note from the hearing was to the effect that the Appellant was able only to give "garbled" evidence.
4. Ms Appiah took me to the medical evidence. She invited me to have regard to reference to social isolation and lack of motivation which was recorded in the various reports from the Central and Northwest London NHS Trust documentation. It was noted in the document at paragraph 55 of the Respondent's bundle that the Appellant, "appeared casually dressed, unkempt, difficult to establish any rapport, he was hostile, uncooperative and did not always provide a response". It was also noted that he was, "monosyllabic and mumbled and was difficult to understand".
5. Though Ms Appiah contended that the judge had accepted that the Appellant had some mental health difficulties he had, in her submission, oversimplified the difficulties which faced this Appellant. She invited me to have regard to paragraph 276ADE(1) of the immigration rules and in particular sub-paragraph (vi) which requires an examination of whether there would be "very significant obstacles to the [Appellant's] integration into the country to which he would have to go if required to leave the United Kingdom".
6. It was Ms Appiah submission that Judge Zahed had not properly addressed that question. Still further as I have already observed it was her submission that having regard to the wider application of Article 8 it was necessary for the judge to look to Section 117B which provides for considerations applicable in all cases. They are as follows:
 - "(1) The maintenance of effective immigration controls is in the public interest.
 - (2) It is in the public interest, and in particular the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
 - (a) are less of a burden on taxpayers, and

- (b) are better able to integrate into society.
 - (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
 - (a) are not a burden on taxpayers, and
 - (b) are better able to integrate into society.
 - (4) Little weight should be given to—
 - (a) a private life, or
 - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
 - (5) Little weight should be given to a private life established by a person at a time when the person’s immigration status is precarious.
 - (6) In the case of a person who is not liable to deportation, the public interest does not require the person’s removal where—
 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.”
7. Even looking outside of the Rules Ms Appiah submitted that the Appellant had lived with his brother, sister-in-law and nephews and that when considering the quality of family life the judge had erred by not taking into account, as in her submission he should have, the fact that there were nephews in that family of which he had become a part.
8. It is trite law that the decision that I might have made is irrelevant to my consideration of the appeal which is brought essentially by challenging the findings of fact made by the judge in this case. It has been stated on numerous occasions and most recently in the case of **UT (Sri Lanka) -v- Secretary of State for the Home Department [2019] EWCA Civ 1095** that the question for an appellate jurisdiction is whether the findings that were made by the judge below were findings that were open to them.
9. Mr Walker for the Secretary of State submitted that the medical evidence though descriptive, did not give a clear diagnosis of the Appellant’s condition. Still further it was of note that the Appellant had a history of problems whilst in Pakistan and that he had been treated for his condition whilst in Pakistan to which reference is made by Judge Zahed at paragraph 18 of the Decision and Reasons. It was Mr Walker’s submission that the complaint that the judge had not assessed the evidence properly was misconceived.

10. I observe that at paragraph 7 of the Decision and Reasons Judge Zahed said:

"I have taken account of all the documents that have been submitted in this appeal even if I have not mentioned them specifically in this decision and reasons, and in particular have read through all the medical evidence that has been submitted in this appeal."

I note further that Judge Zahed made specific reference to care plan review letters and assessments, the evidence of Dr Sagar Dhanani, noting the Appellant's medical history including hypertension, hyperlipidaemia and depressive disorder.

11. Contrary to the submission made on behalf of the Appellant, I am satisfied from reading the Decision and Reasons that Judge Zahed did have in mind the totality of the medical evidence. I see no reason why he would have said that he had were that not the case and there was little to be gained in my view from him simply setting it all out. The Appellant knew what medical evidence was being relied upon.
12. In relation to 276ADE and the issue of reintegration, Ms Appiah accepted that there was, as the judge pointed out, no evidence submitted by the half-sisters in Pakistan to state why they could not help the Appellant even for a short period and she did not contend that it was not open to the judge to find that there was no evidence why their husbands would be unwilling to help their brother-in-law, especially as there had been no evidence that the sisters had fallen out with the Appellant. The burden of proof was upon the Appellant to establish the primary facts.
13. It was open in my judgment to the judge to find, absent evidence to the contrary, the burden as I have already stated being on the Appellants, that the Appellant had not proved that he could not go to his half-sisters. Still further as the judge observed at paragraph 18, the treatment which the Appellant might need was demonstrated to be available in Pakistan. If the condition had changed then, as Mr Walker observed, there was no diagnosis to establish that the situation facing the Appellant was so different that such treatment as was required was unavailable in Pakistan and the evidence therefore was lacking on that point.
14. It was open to the judge to find on the evidence that there were sufficient financial resources available in the United Kingdom to assist the Appellant were he to return to Pakistan and I find no material flaw in the judge's assessment of proportionality having asked himself, as he was bound to do, the five **Razgar** questions. Ms Appiah was right technically that the judge was bound as a matter of law to look to Section 117B of the 2002 Act and in this case it appears that the only factor to which regard was had was the precarious nature of the Appellant's status. That the Appellant would be financially independent and speaks some English are relevant factors but they are neutral factors. They are factors that weigh

in the public interest where they are lacking but the presumption is the maintenance of effective immigration control being in the public interest.

15. The point made in relation to the Appellants nephews was not pursued with any real vigour. Ms Appiah was right to take that approach especially when little reference is made to them in any of the witness statements. What is clear is that it is in those children's best interests to remain with their parents. It was not suggested by Judge Zahed that they need leave the United Kingdom.
16. Notwithstanding all of the submissions ably made by Ms Appiah on behalf of this Appellant I do not find that this judge has lightly considered the medical evidence but rather having regard to the totality of the decision clearly had regard to it, made findings that were open to him, in circumstances in which both family and private life can continue in Pakistan given that this Appellant is an adult. This is not an appeal involving a Sponsor and child where the considerations would be different. It is perfectly clear that the Appellant's disabilities have been properly considered by the judge.
17. In those circumstances the appeal to the Upper Tribunal is dismissed.

No anonymity direction is made.

Signed

Date: 11 July 2019

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Deputy Upper Tribunal Judge Zucker