Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-000847
HU/01379/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 16th August 2022	**On 10th October 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MS MUNIR AKHTAR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Walsh instructed by Spring & Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Blackwell who on 18th November 2021 dismissed the appellant's appeal on human rights grounds against the Secretary of State's decision to refuse her human rights claim under Article 8.

2. The appellant is a citizen of Pakistan born on 11th May 1955 and she entered the United Kingdom on 11th July 2015 with entry clearance as a visitor granted from April 2015 to April 2020. On 7th January 2016 the appellant made an in-country application for leave to remain in the UK on

the basis of her private life primarily owing to her medical condition and separation from her husband. That application was refused on 10th December 2016 with no right of appeal and judicial review proceedings ensured. However the decision was then reconsidered, and the application refused with a right of appeal. That appeal was heard by Judge Rodger on 24th May 2018 and the appeal was dismissed in a decision on 27th June 2018. A further claim was refused by the respondent on 27th January 2021 which generated this decision.

3. The grounds for appeal acknowledge that the appellant had overstayed her visit visa but submitted that the appellant resided with her son, his wife and children and four of her children were settled in the UK. She had applied for leave to remain in view of her connections with her family, her personal needs and to maintain her family and private life. The husband and father of the children remained in Pakistan, but she was separated from him.

4. It was submitted that the appellant's appeal should be allowed because:

   (1) the immediate family were in the UK;

   (2) the family members in the UK had their own families so emigration to Pakistan was not reasonable;

   (3) the appellant had grown older with medical needs including a need for practical support with daily chores and personal care and those needs were provided for in the UK by her family;

   (4) the appellant had no immediate contacts remaining in Pakistan to enable her support and integration there and would face the challenge of obtaining accommodation of living as a single woman in Pakistan; and

   (5) she would face the obstacle of arranging practical care for herself in Pakistan on her return. The family could provide some support remotely but that was not a substitute for direct support of family members.

5. The grounds to the Upper Tribunal submitted that the judge had erred in two ways. First in relation to the nursing home care and secondly at paragraph 57(c) when applying Section 117B of the Nationality, Immigration and Asylum Act 2002. I take each ground in turn.

6. Ground 1. It was asserted that the judge had erred in his conclusion at [28] that there would be nursing home care available to the appellant on return. This conclusion was based on the evidence of the Home Office and the judge stated at [28]:

> *"28. I have taken into account the country information on Pakistan. Specifically, the Home Office Country Response to an Information Request 'Pakistan: Care assistance' (Reference Number:*

12.19.039, 18 December 2019) (HOB pp225-228) This suggests there to be objective evidence that home care through a nurse is available, as is nursing home care".

The evidence at [225] to [228] of the respondent's bundle did not support the finding of the judge. Those pages contained the response of a Country of Information Unit to a request to the Home Office regarding nurse home care and care in the home in Pakistan. This related to home assistance care available through Aga Khan University Hospital in Islamabad and referred to a 24-care nursing home in Rawalpindi and a psychiatric hospital such that care was available around the clock at a psychiatry institute in Hyderabad. The report stated there was no evidence of further home care available in Pakistan, 1.1.2. The judge had stated at [28] that this suggested that nursing and care in the home would be available to the appellant. As for care in the home the report stated there was a "home assistance" facility available in Karachi, nothing else was reported to be available and Karachi was 1,025 kilometres' distance from the appellant's home in Lahore, nor could the facility in Rawalpindi found a conclusion that it would be available to the appellant. In summary, the very brief report from the COI could not be read as founding the conclusion that the appellant could access nursing home or care.

7. At the hearing Mr Walsh accepted the facts and the core findings by the judge such that they were not in dispute. The judge, he submitted found that the appellant could not live alone without assistance at [48]. He accepted that she was registered with a GP, and I was referred to the Home Office bundle in relation to the core finding at [49]. It was submitted that Rawalpindi was 160 miles away. Mr Walsh acknowledged the evidence was sparse and confirmed that he was not sure whether this report was generated by this appellant or another appellant and agreed that there was no other evidence in relation to the provision of care in Pakistan. The appellant, he said, was a genuine visitor. The Home Office evidence showed that there was no care near the appellant's home.

8. Mr Tufan accepted that the appellant had health conditions, but the contents of the appeal were analogous to an adult dependent relative application which should have been made from abroad. The immigration rules at Appendix FM ECDR2.5 stated the applicant must be unable with the practical and financial support to obtain the care required and he referred to the case of **Britcits v Secretary of State [2017] EWCA Civ 368** in which the focus should be on whether the care required by the ADR applicant can be "reasonably" provided and to "the required level" in their home country. It was clear from the document that there were care homes available in Pakistan and although those homes were some distance from where the appellant lived in Lahore there was evidence that there was a break-up in her relationship from her husband and no indication that the appellant would wish to return to the Lahore home area. She could relocate. If she wanted to go back to Lahore there was no suggestion that 24-hour care was not affordable as per ECDR2.5 and further, if she chose to go back to Lahore there was no suggestion that this

could not be provided. The appellant had come to the UK as a visitor and her leave had always been precarious here. Further, the test of unjustifiably harsh circumstances is a high test and the appellant had lived all her life in Pakistan save for the last few years.

9. Mr Walsh also submitted that there was nothing in the documents from the appellant in terms of evidence as to care homes in Pakistan. Further, he stated there was nothing specific in the appellant's evidence, such as in the medical evidence as to the specific care required and no social services document to show how great her needs were, beyond pages 119, 139 and 147 which were the doctors' reports in the appellant's bundle. Her presentation was consistent with someone who is elderly and growing elderly, and she was 67 years old.

10. I reject this ground of appeal. It is clear from the evidence recorded by the judge that her son had the financial resources to support the appellant [20(c)] and it was also noted that the appellant has two sisters in Pakistan, albeit they live in rural areas. The judge recorded in the evidence that the sponsor maintained:

> *"26. There are no care facilities in Pakistan: they do not have a concept of it like in the UK. He wants his mother to stay here so he can look after her: that is the duty of children. He had not approached any care homes in Pakistan as there are not any".*

11. The judge rightly directed herself in accordance with **Devaseelan v SSHD [2002] UKIAT 00702**_ and the previous decision of Judge Rodger. At [43] onwards the judge set out a raft of the relevant aspects of Judge Rodger who as recently as 27th June 2019 had made findings, having considered the medical evidence, which mainly consisted of reports and letters from treating doctors and specialists. Judge Rodger was not satisfied that the appellant was unable to travel back to Pakistan nor that the evidence so demonstrated. The judge also found that despite the appellant attending the hearing in a wheelchair in 2019 she was not satisfied that the appellant had proved that she

> *"reasonably requires such extensive or any care and assistance or that any assistance is due to medical reasons rather than culture and taking care of one's parents. There is no persuasive evidence that she regularly takes painkilling medication and I find it difficult to accept that there would not have been further investigation into her health conditions if they were as extensive as said within the witness statements". ... "I am not satisfied that it has been proved on the balance of probabilities that she is in need of care or support from her family members or that it is care or support that cannot be provided by others in Pakistan"([27] of Judge Rodger's decision).*

The previous judge further added n:

"I am not satisfied that the appellant has provided that she is an adult dependent relative for the purposes of the Immigration Rules due to the insufficiency of medical or persuasive evidence to prove the same and in any event, given that the appellant is in the UK with leave other than leave to remain as an adult dependent relative, she is not able to meet the Immigration Rules under Appendix FM relating to an adult dependent relative. She would be able to make such an application for entry clearance on such grounds from Pakistan and would have to obtain the necessary evidence to prove that she meets the Immigration Rules" [30] Judge Rodger's decision.

12. The previous judge did not accept that she would face very significant obstacles to her integration in Pakistan and found that if she was suffering to the extent that she would be unable to cook or carry out her own day-to-day tasks the family could intervene and assist by paying for the appellant to obtain any necessary treatment, and at [34] and [35] Judge Rodger stated this:

"34. With respect to the availability of accommodation or finances in Pakistan, there appears to have been no attempt by or on behalf of the appellant (such as through the son that has had contact with her husband) to discuss practical issues relating to their separation and the appellant's situation. Overall I am not satisfied that all avenues of redress have been properly looked at and I am not satisfied that the appellant is likely to be destitute on return to Pakistan or that she will not be able to re-integrate into Pakistan. Mere upheaval, inconvenience and mere hardship is not enough. She is a national of Pakistan. She lived there for 60 years. She has remaining family in Pakistan and is likely to have ongoing contacts and connections in Pakistan given the amount of time that she spent there. There has been no enquiry as to what the appellant would be entitled to if she were to divorce or legally separate from her husband, such as a share of the house or a share of his pension or savings and I am not able to accept that she has no reasonable options on return to Pakistan or likelihood of destitution.

35. Given that there has been no history of physical violence or threats against the appellant, I am not satisfied that she would be unable to return to her home area or to return to the family home. Whilst it is the appellant's case that she will have no money or accommodation to return to, I note that the appellant has not started divorce proceedings and there is no evidence that she has enquired or investigated what she will be entitled to with respect to the family income/equity in the home. In any event, given that the appellant has spent 60 years in Pakistan, I am satisfied that she would have sufficient cultural and social ties to Pakistan such to allow her to relocate to another area of Pakistan if she felt unable to return to her home area. Further, given the closeness of her family in the UK, it is more likely than

not that her sons will continue to financially support her on return to Pakistan if she were to need it. Further, given the lack of enquiry into any care provision on return to Pakistan, even if she did need some care, I am not able to accept that the appellant would not be able to get any necessary care or support on return to Pakistan. It has not been proved that she has any extensive care needs or that such needs could not be met in Pakistan through the financial assistance of her family in the UK if she were to need such assistance".

13. Thus Judge Rodger had very recently flagged up that she was not satisfied that all avenues of redress had properly been looked at in relation to the appellant's situation. At [49] Judge Rodger found that the appellant could continue to receive financial assistance from those in the UK and the appellant had lived apart from her family for many years and could continue to receive any necessary support or comfort from them through visits and could receive any necessary treatment for medical conditions in Pakistan and seek support and treatment in her home country. Given that she had not been able to meet the requirements of the Immigration Rules there were no exceptional compelling circumstances that arose.

14. These were the findings that Judge Blackwell relied upon but acknowledged they were a starting point and no doubt with the sponsor's evidence considered that she could not live alone without assistance [48]. That does not indicate that the judge found she needed nursing home care.

15. I was referred to three pieces of evidence at pages 119, 139 and 147 of the bundle. The first was a letter from Virgin Care which predated the decision of Judge Rodger, the second was a letter from Kingsway Health Centre dated 24th May 2019 which also predated the decision of Judge Rodger, and essentially mirrored the letter of 30th June 2021 from the Kingsway Health Centre said to be new evidence.

16. The judge identified that 'new' evidence, merely a letter from a GP dated 30th June 2021 which described some medical problems including polymyalgia rheumatic, (sic) hypertension and other allergies and lumbar spondylosis with nerve root irritation which caused 'difficulties in walking, going to toilet, (sic) bathing and changing clothes as well as her other day to day activities' and due to her medical issues she was not able to live by herself. However that evidence was effectively repeated from 2019 and addressed by Judge Rodger as being unsatisfactory. Many of her medical ailments predated 2019.

17. The judge specifically dealt with the third piece of evidence, that was the letter of Dr Ramsundar consultant physician in respiratory medicine dated 11th September 2020. That merely recorded that the appellant had chronic asthma and reflux with a cough and a follow up letter stated that her cough and breathlessness had improved. The CT scan results were not provided.

18. None of this evidence gave any detail (which had been accepted) as to the care and support that the appellant would expect to address her difficulties save a general "imperative" that she be cared for by her son and daughter-in-law in the UK. The two letters which were similar from the Kingsway Health Centre (and 2 years apart) were said to record the appellant's difficulties, but the judge found that nothing in the evidence contradicted the findings of Judge Rodger who found that there would no very significant obstacles to the applicant's integration in society following her return to Pakistan. As the judge clearly stated at [52] there was no new evidence that would cause her to depart from Judge Rodger's finding on this matter. That finding was open to the judge on the evidence.

19. There was specific criticism of the judge's approach to the medical evidence in relation to the Home Office objective evidence. First, however, there was no indication that this general evidence related to the appellant. The report was dated 18th December 2019 and entitled Response to an Information Request Pakistan: Care assistance but the key words were hospital, Islamabad, nurse. There was no indication that the appellant needed nursing care or any confirmation that she needed to be placed within a home. The response also had added to it that it was "compiled and researched by the Country Policy and Information Team within time constraints using publicly accessible information". There was no indication that this specifically related to Lahore or this city had been considered.

20. That said, as submitted by Mr Tufan this showed that there were care homes in Pakistan and if required the appellant, as she no longer wished to reunite with her husband, could relocate elsewhere in one of the care homes.

21. The judge found at [50] that her family had been financially supporting the appellant in the UK and there was no reason to suppose that they would fail to support her financially on return to Pakistan.

22. Contrary to **Secretary of State v R (Kaur)** [2018] EWCA Civ 1423 para [57] the appellant effectively had made a bare assertion that there were no homes or support available for her in Pakistan. Judge Rodger had already flagged up that there was an insufficiency of medical or persuasive evidence that she could meet the adult dependent relative rules or there were any very significant obstacles to the appellant's reintegration in Pakistan. The appellant had failed to provide any further significant evidence as to what she required and a bare assertion that there is a lack of facilities will not suffice. As Judge Rodger pointed out

> *"Given the lack of enquiry into any care provision on return to Pakistan even if she did need some care I am not able to accept that the appellant would not be able to get any necessary care or support on return to Pakistan. It has not been proved that she has any extensive care needs or that such needs could not be met in Pakistan through the financial assistance of her family in the UK if she were to need such assistance".*

23. The appellant was thus on notice as to what was required. It was open to Judge Blackwell to find that the appellant's "unsubstantiated assertion that there are not care homes ... in Pakistan" was rejected and for the reasons I have given that was entirely legitimate. I find no material error of law in the decision.

24. Ground 2. A second ground of challenge was that the judge erred at [57(c)] when applying Section 117B of the 2002 Act by holding that the appellant was not financially independent. She relied on her family for her support and maintenance. It was possible to rely on support from friends and family and be treated as financially independent within Section 117B.

25. I find there is no material error of law in this aspect of the decision either. Although the judge found the appellant not to be financially independent because she depended on her family for financial support the judge did note that she was not "directly" dependent on public funds. The judge went on however to record that the appellant used the NHS but accepted that she had not paid for those services because the NHS trust had not issued a demand. There was no indication this that the judge counted this against the appellant.

26. Aside from this it was quite clear from the extensive appointment letters and tests undertaken (without results produced) within the appellant's bundle that she had made extensive use of the NHS during the seven years that she had resided in the UK having entered as a visitor. That is access to public funds, and it was confirmed to me that the appellant did not pay for private treatment. Although she may have paid an NHS charge on the last application there was no indication that she had covered her medical fees following previous applications. This applicant has made at least two separate applications since her entry to the UK. Even if I am wrong about this, I am not persuaded that the judge's approach to Section 117B which at best would be a neutral matter if the appellant were found not to be dependent, was materially flawed. It is clear the judge was correct in his approach to Section 117B(5). The judge acknowledged that her precarious status did not require the attachment of little weight in terms of her family life.

27. I find overall there is no error of law of the decision and the decision shall stand. The Upper Tribunal is enjoined to be cautious about overturning decisions of the First-tier Tribunal. This judge had the advantage of hearing live evidence and clearly in a detailed and thorough analysis cogently reasoned that there was no new evidence to depart from a very recent decision in terms of the appellant's need for care and support and properly found that the appellant could not therefore comply with either the Immigration Rules in respect of adult dependent relatives or in relation to paragraph 276ADE. Further, there were no very compelling circumstances in the light of the evidence in the round. Secondly, I am not persuaded that the judge's approach to Section 117B was flawed when reading the decision carefully and as a whole.

28. The decision of the First-tier Tribunal will stand as there is no material error of law. The appeal remains dismissed.

No Anonymity Direction

Signed Helen Rimington Date 6th September 2022

Upper Tribunal Judge Rimington