



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-000680**  
**First-tier Tribunal No:**  
**HU/57381/2021**  
**IA/16682/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 14 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**Ghafoor Hussain Bhatti**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Z Nasim, counsel instructed by M-R Solicitors LLP  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard at Field House on 10 May 2023**

**DECISION AND REASONS**

Introduction

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Aldridge heard on 1 February 2023.
2. Permission to appeal was granted by First-tier Tribunal Judge T Lawrence on 16 March 2023.

Anonymity

3. No anonymity direction was made previously, and there is no reason for one now.

### Factual Background

4. The appellant is a national of Pakistan, now aged 52. He entered the United Kingdom on 10 December 2003 with leave to enter as a visitor. Following a number of unsuccessful applications for leave to remain, the appellant made a human rights' claim on 18 December 2020. That application was refused by way of a decision dated 18 November 2021 and is the decision which is the subject of this appeal.
5. The basis of the appellant's human rights claim was his fear of returning to Pakistan, his medical conditions, the support he received from his brother in the United Kingdom, the lack of ties in Pakistan and the family and friends he had in the United Kingdom. In the decision letter, the respondent noted that the appellant had failed to register his protection claim, stated that Pakistan had a functioning healthcare system, that the appellant's brother could financially and morally support him in Pakistan and that he would be able to reintegrate using his existing ties.

### The decision of the First-tier Tribunal

6. Following the hearing before the First-tier Tribunal, it was found that the appellant had acquired no more than 19 years and one months' continuous residence in the United Kingdom, having arrived here on 25 December 2003. The appellant's fear of ill-treatment was rejected owing to his failure to articulate his claim. In addition, the judge found that the appellant's seven adult children in Pakistan could assist with his reintegration and that there was treatment available for depression, heart problems and diabetes in Pakistan. The judge did not accept that there was a risk of suicide involved. Lastly, it was not accepted that there was family life between the appellant and his brother.

### The grounds of appeal

7. The grounds of appeal argued that the judge failed to take into consideration all the evidence showing that there was a relationship between the appellant and his brother which was over and above normal family ties. It was contended that the appellant was his brother's primary carer and that the judge either did not consider or misread the medical evidence.

8. Permission to appeal was granted on the basis sought, with the judge granting permission making the following remarks.

It is arguable that the Judge materially erred in law in their approach to the question of whether the Appellant enjoys family life with his brother in the United Kingdom, as asserted in the ground.

9. The respondent did not file a Rule 24 response.
10. In advance of the hearing, M-R Solicitors served a Rule 15(2A) application along with additional evidence including that emanating from the government of Pakistan.

### The error of law hearing

11. When this matter came before me, both representatives confirmed that there was no Rule 24 response. Ms Everett considered the grounds for herself and indicated that she was undecided whether the judge's findings on the family issue were adequate.
12. I then heard detailed submissions from Mr Nasim, following which Ms Everett conceded that the judge's consideration of the relationship was inadequate, and that the situation is more nuanced than that noted by the judge.
13. At the end of the hearing, I informed the representatives that the ground of appeal was made out and those findings were set aside. Mr Nasim urged me to remit the matter to the First-tier Tribunal for a de novo hearing.

#### Decision on error of law

14. The appellant's brother, Maqbool, arrived in the United Kingdom during 2005. The appellant having arrived earlier in 2003. Maqbool, was granted Discretionary Leave to Remain and is now a naturalised British citizen. The claim to a family life together was set out at some length in the appellant's witness statement before the First-tier Tribunal as well as that of his brother. In essence, it was said that the brothers have been residing together since 2005, that theirs is akin to a father and son relationship, that the appellant is Maqbool's primary carer owing to numerous medical conditions (including heart attack, stroke and being in a coma which was said to have prevented the appellant from attending his asylum appointment) and that Maqbool has been providing the appellant with financial and emotional support.
15. While the judge commented on the evidence set out above, at [39], this was in the context of the availability of alternative support for Maqbool in the absence of the appellant. The judge's findings on the family life issue were as follows [40].

I have not found that there is any relationship that is over and above the normal ties between adult relatives.
16. The findings at [40] went entirely unreasoned. There was evidence before the judge which went to the issue of mutual dependency between the brothers, applying *Kugathas* and the argument was also put in the appellant's skeleton argument. The judge erred in not considering that evidence or argument and had he done so the outcome of the appeal could have been different. Consequently, the judge's consideration of Article 8 outside the Rules is set aside. None of the judge's other findings were challenged in the grounds of appeal and they, therefore, stand.
17. There was some discussion of post-decision events concerning Maqbool and an Interpol alert which had been issued by the government of Pakistan, as a result of which further evidence had come to light. As the Article 3 claim was not challenged in the grounds, I did not consider it appropriate for these matters to be aired in the Upper Tribunal. It is for the appellant and his representatives to discuss if he wishes to raise a new matter before the First-tier Tribunal when this matter is reheard.
18. I canvassed the views of the parties as to the venue of any remaking and both were of the view that the matter ought to be remitted. Applying *AEB* [2022] EWCA Civ 1512 and *Begum* (Remaking or remittal) Bangladesh [2023] UKUT

00046 (IAC), I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as well as the fact that the nature of the errors of law in this case meant that the appellant was deprived of an adequate consideration of his human rights appeal. I further consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and therefore remit the appeal to the First-tier Tribunal.

**Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal.**

T Kamara

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**11 May 2023**