



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002286
UI-2022-002287
First-tier Tribunal No:
PA/00994/2021 PA/04601/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

TZ & MT
(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Represented by the First-named Appellant
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer
Interpreter: Mr Azhar

Heard at Manchester Civil Justice Centre on 8 August 2023

DECISION AND REASONS

1. The Appellants are nationals of Pakistan, born on 23 April 1954 and on 22 August 1982 respectively (father and son respectively), who both applied for asylum on 5 March 2019.
2. The Respondent refused their applications in decisions sent out on 15 April 2021 and 9 October 2020 respectively because they had not demonstrated they were members of a particular social group or at risk of persecution.
3. The case was listed before Judge of the First-tier Tribunal Thorne (hereinafter referred to as the FTTJ) on 18 November 2021 and in a decision promulgated on 31 January 2022 their appeals were dismissed.

4. Permission to appeal was sought by the Appellants on 11 February 2022 and on 14 April 2022 Judge of the First-tier Tribunal Grant-Hutchinson gave permission to appeal on all grounds and stated:

“... it is arguable that the Judge has erred in law by failing to give adequate reasons in coming to his decision when considering (a) that the first Appellant is 65 years old and the second Appellant came to the UK as a child; (b) the first Appellant’s wife is buried in the UK (the second Appellant’s mother) and the effect on the first Appellant’s lack of ability to visit her grave more frequently if he is returned to his country of origin; (c) by failing to take into account that the first Appellant has other children in the UK (the second Appellant’s siblings) and (d) by failing to consider the first Appellant’s medical conditions other than generalising that he can obtain medical support in Pakistan for same without considering how his conditions may or may not affect him on return.”

5. The Appellants adopted the grounds of appeal and the grant of permission given. He reminded the Tribunal that he and his son had now accumulated 20 years residence in this country.
6. No Rule 24 response had been filed but Mr McVeety submitted there was no error in law. Whilst the Appellants may have been here for twenty years, they had not at the time they made these applications and that was the relevant date. All the current matters highlighted in the grant of permission had previously been dealt with by Judge Lloyd and the FTTJ did not go behind that decision albeit his reasoning was brief. However, he had made findings about their ability to visit the grave and there was little medical evidence before the FTTJ to result in a different outcome than that made by Judge Lloyd.
7. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (512008 /269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

DISCUSSION AND FINDINGS

8. Having heard oral submissions, I reserved my decision but for the reasons herein after given I find there is no error in law.
9. Permission to appeal had been given for the reasons given in paragraph [4] above, but in assessing whether the FTTJ erred it is important to look at the totality of the evidence and then how the FTTJ approached that evidence.
10. The FTTJ outlined the Appellants’ cases in paragraph [5] of his decision noting the Appellants had been in this country since 2003 albeit asylum was not claimed until 5 February 2019. TZ claimed his problems stemmed from the fact he had loaned money in 2003 and he had never repaid the

person who lent him the money. When asked why he had failed to mention this in his screening interview he claimed this was because he had never been asked but he now had no idea where the person he had borrowed money was now living as he had not heard from him since he left Pakistan. The FTTJ noted that the TZ's wife had come with the Appellants but had died in 2007/2008 and that he visited her grave often. The FTTJ noted he suffered with various health issues. In so far as the second-named Appellant was concerned he stated he had not mentioned the problem with the money lender either in his screening interview or at a previous human rights appeal hearing. He had not told the Tribunal because his solicitor had told him not to mention it. Both Appellants stated they were trained as chefs and could both speak Urdu. The FTTJ summarised the medical documents he had been provided for both Appellants.

11. These appeals began as asylum claims although neither Appellant raised any protection issues in the grounds of appeal that led to these appeals coming before me today. In fact, the grounds of appeal are based solely on human rights grounds including (a) the loss of the first-named Appellant's wife from cancer in 2008, (b) visits to her grave, (c) claimed dementia, (d) fact the Appellants had been living in Saudi Arabia before coming to the United Kingdom and (e) private life established over a lengthy period of time.
12. The FTTJ dismissed the protection claim and looking at the IAFT-4 and subsequent permission I find no basis to go behind the FTTJ's findings made at paragraphs [39] to [42] of the decision and I make the point no leave to appeal on protection grounds was anyway.
13. The challenge today centres around the FTTJ's approach to the Appellants' human rights appeals which the FTTJ considered between paragraphs [62] and [86]. The FTTJ made the following findings:
 - a. There was little evidence of the nature of the Appellants' private lives as there was no third-party evidence. However, the FTTJ accepted article 8 ECHR was engaged and proceeded to consider whether removal was disproportionate.
 - b. At paragraph [75] the FTTJ noted there was a legitimate interest in maintaining immigration control; the second-named Appellant could speak English but the first-named Appellant could not; there was a lack of evidence that they could adequately support themselves without recourse to public funds; they established their private life whilst their immigration statuses were precarious; they had not demonstrated their medical ailments could not be treated in Pakistan; they failed to demonstrate they would be unable to work as chefs and obtain accommodation in Pakistan; they both speak Urdu; the first-named Appellant had spent the majority of his life in Pakistan and had previously worked there and they could travel to the United Kingdom to visit the first-named Appellant's grave as well as maintain contact with any friends or family they have in this country.

14. Given they only came to this country on their own accounts in 2003 they could not demonstrate they had lived here continuously for twenty years as at the date of application and the FTTJ concluded they had both failed to demonstrate “very significant obstacles” to them re-integrating into Pakistan. Whilst the reasoning is limited the Courts have made it clear that “very significant obstacles” is a high bar and I find no reason to go behind FTTJ’s findings on this issue especially as he had in mind the high test as evidenced by what he stated in paragraph [79] of his decision.
15. The FTTJ considered whether there were exceptional circumstances to allow the appeal outside the Immigration Rules. As stated above the FTTJ did set out the law correctly and he referred to section 117B of the Nationality, Immigration and Asylum Act 2002 (as amended). The FTTJ took into account the Appellants had been away from Pakistan for a long time but insufficient to satisfy Paragraph 276ADE HC 395. The FTTJ noted both spoke Urdu and was satisfied that given their skills they would be able to find work and accommodation in Pakistan.
16. The issue therefore is whether the FTTJ’s alleged omission to consider either visiting the family grave or any medical conditions meant this decision was flawed to the extent that it should be set aside. The FTTJ did briefly consider visiting the family grave as he found at paragraph [75(j)] of his decision that the Appellants could travel to the United Kingdom to visit the family grave. Additionally, before the FTTJ was the previous decision of Judge Lloyd who heard a human rights appeal from both these Appellants on 6 June 2018. As to the issue of visiting the grave Judge Lloyd made clear findings the Appellants would be able to visit the grave albeit not as often as they may wish. She referred in her decision to Abbasi and another (visits-bereavement-article 8) [2015] UKUT 00463 (IAC) and concluded there was nothing that suggested that being unable to visit the graves as often as they wished would have a significant psychological impact on them. Whilst I acknowledge the FTTJ’s decision did not specifically mention this decision it is a document I must consider when considering whether a failure to make detailed findings could amount to an error in law.
17. Judge Lloyd also considered the medical conditions of both these Appellants and found they both took moderate medication for their mental health conditions and the first-named Appellant had chronic health problems. However, she concluded they did not interfere enormously with their day to day lives and it was not disputed there were medical facilities in Pakistan. She concluded there was nothing to support their claims they would be unable to financially pay for their treatment given they were both capable of work. The FTTJ reached similar conclusions in paragraph [75(f)] of her decision. Judge Lloyd concluded for the reasons given at paragraphs [83] to [87] that it would not be disproportionate to refuse them permission to remain.
18. As I stated above the FTTJ did not refer to this decision in his decision but in assessing whether there is material evidence I must consider all the

evidence that was before the FTTJ and decide whether the FTTJ's omission to deal in detail with visiting the grave and health issues amounted to a material error.

19. If Judge Lloyd had not dealt with these issues in 2018 (or at all) then I am in no doubt there would have been an error. However, in deciding whether there is an error I must look at what Judge Lloyd said and I find nothing else in the evidence that was presented to the FTTJ which would have led to a departure from those findings and the FTTJ reached the same position in any event.
20. For these reasons I find there is no material error in law albeit I acknowledge both Appellants have now accrued 20 years residence in this country.

Notice of Decision

There is no error in law. The First-tier Tribunal's decision shall stand and the appeal is dismissed.

Deputy Judge of the Upper Tribunal Alis
Immigration and Asylum Chamber

9 August 2023