



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000574
UI-2023-000575

First-tier-number: HU/00816/2022
HU/53161/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd of December 2023

Before

DEPUTY UT JUDGE FARRELLY

Between

Mrs ZOHRA BIBI
Mr MUHAMMAD HASNAIN

Appellant
s

(anonymity order not made)

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms A M Supulveda of Fountain Solicitors (Walsall).
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer.

Heard at Field House on 1st September 2023

DECISION AND REASONS

Introduction

1. The appellants are mother and child. The first appellant was born on 30 July 1970, the second on 25 October 2003. Both are nationals of Pakistan. They came to the United Kingdom on 21 June 2018. The first appellant had entry clearance as a partner, valid until 4 March 2021. This was to join her husband, Mr Mansha Hussain, hereinafter referred to as the sponsor. The second appellant came with leave as a dependent.
2. On 19 February 2021 they applied for leave to remain on the basis of their family life with the sponsor. These applications were refused on 11 December 2021. The respondent considered the under the immigration rules. Consideration was given as to whether the first appellant was exempt from some of the eligibility requirements and paragraph EX 1(a). Regard was then had to paragraph 276 ADE 1. The respondent concluded that the family could returned together to Pakistan where they can continue to enjoy family life. The respondent did not see very significant obstacles to integration into life in Pakistan. Regard was had to paragraph Gen 3.2 and whether there were exceptional circumstances rendering a refusal a breach of article 8. None of these assisted.

The First tier Tribunal

3. Their appeals were heard by First-tier Tribunal Judge Broe at Birmingham on 23 November 2022. They were represented, as they are now, by Ms Sepulveda. There was a presenting officer in attendance.
4. The determination records that the first appellant married her sponsor on 22 February 1987. He had married a British citizen on 22 November 1996 and obtained a divorce from her in October 2017. The First-tier Tribunal Judge noted the respondent had not raised any point in relation to the legitimacy of the marriage or marriages. However, the judge found it went to credibility and the nature of the family life established, albeit it was accepted by the respondent as established.
5. At hearing, there was reference to a change of circumstances after the appellants arrived. The first appellant said her sponsor was in employment when she arrived but his health deteriorated. He also had to cease work because he was caring for the appellant who also had health issues. He continued to work part-time as an Uber driver. The determination records that both representatives accepted the financial requirements were not met.
6. The second appellant was in full-time education. The first appellant confirmed she had a daughter in Pakistan and two sons living in France. She had family including her parents and four siblings in Pakistan .
7. Their appeals were dismissed in a determination dated 22 December 2022. The judge dealt with the immigration rules and having concluded aspects were not It was recorded their sponsor was in receipt of Child Benefit, Universal Credit and Council Tax Benefit . The judge recorded that financial requirement of £22400 per annum could not be met. I do not see any reference the determination about an application for PIP's. A decision letter dated 16 August 2022 in the papers confirm this was awarded at the standard rate mobility from 4 April 2022 . It is not apparent why this was not raised at hearing. In any event, there remained the

English language issue . At paragraph 28 the judge found that no real explanation had been offered as to why this was not satisfied.

8. The judge did consider whether paragraph EX 1 of the immigration rules applied but did not see insurmountable obstacles to family life continuing outside the United Kingdom. Paragraph 276 ADE was also considered and the judge did not find very significant obstacles to their reintegration into Pakistan.
9. Regard was had to paragraph Gen 3.2, with the judge concluding there were no exceptional circumstances. The judge carried out an article 8 assessment and it is now argued insufficient reasons were given.

The Upper Tribunal.

10. Permission to appeal to the Upper Tribunal was refused by First-tier Tribunal Judge Gumsley on 19 January 2023. This was on the basis the grounds amounted to a disagreement with the findings and the conclusions reached and had not demonstrate an arguable material error of law.
11. A renewed application for permission was made to the Upper Tribunal and on the 3rd of May 2023 Upper Tribunal Judge Owens granted permission. It was arguable that in carrying out a freestanding article 8 assessment the First-tier Judge had failed to have regard to the statutory considerations and failed to take into account factors favourable to the appellants, such as their lawful entry, the change of circumstances and the second appellant studies, as well as the fact the sponsor had been granted Personal Independence Payment.
12. At hearing, I was referred to the paragraphs 46 and 48 of the determination. At paragraph the 46 judge said the decisions did amount to an interference with the appellant's article 8 rights and that the issue was proportionality. The judge then referred to whether there were exceptional circumstances and stated the bar was set high . At paragraph 40 the judge concluded that the respondent's decision accorded with the law and the immigration rules.
13. Ms Supulveda argued that the judge had failed to provide adequate reasons and that the family circumstances were not properly assessed. The first appellant had care needs and these were currently met by her husband and their son, the second appellant. Regarding the application of EX 1 she submitted that the judge failed to carry out a proper balancing exercise. She suggested that if I found material error of law remitted for a de novo hearing in the First-tier Tribunal .
14. In response, Mr Avery said that paragraph 46 and 48 of the decision had to be read with the judge's earlier findings . He accepted that the judge did not set out the section 117 considerations but argued these were not material. Regarding the question of insurmountable obstacles he said there was a lack of evidence as to the situation in Pakistan such as the availability of medical treatment. The judge had considered the background information provided and the choices open to the family. The award of pips was referred to a supplementary bundle. He agreed if there was an error the matter should be remitted to the first-tier Tribunal .
15. In reply, Ms Supulveda relied upon the submission and highlighted the evidence regarding the award of PIPs which she said affected the balancing exercise.

Consideration

16. When considering the decision I bear in mind the material that had been placed before the judge. I agree with Mr Avery that the judge's conclusions at paragraphs 46 and 48 has to be read with the earlier findings. To focus upon only sections or lines of in a decision can be very misleading. The judge correctly sets out the chronology. At paragraph 5 the judge refers to taking into account the bundles prepared on behalf of the appellants as well as the respondent's bundle. Notably, there is nothing to indicate the award of pips was communicated to the judge .
17. The bundles contain medical evidence. The judge has acknowledged the health issues. There is a letter dated 29 June 2022 from Darlaston health centre stating the sponsor ,who was born in 1958, has type 2 diabetes and had recently been referred regarding a trochanteric bursitis, an inflammation around the hip. The doctor also refers to a recent steroid injection in respect of a right frozen shoulder. An earlier letter also refers to him having shortness of breath and a chest x-ray had been requested.
18. There is also a letter of the same date in respect of the first appellant stating she has osteoarthritis in her knees and underwent a nerve block recently in her right knee to relieve the pain. She also has hypertension and a loss of bone density in her hip, at the femoral neck . A blue badge had been issued.
19. There is a letter from the hospital referring to an attendance on 29 September 2022 were stated she had bilateral chronic knee pain and the orthopaedic surgeons felt she needed a knee replacement but this was to be deferred bearing in mind she was not aged . Many of these conditions would have been long-standing and there is medical evidence in Pakistan about her knee.
20. It was for the First-tier judge to assess this evidence . The judge considered the first appellant's health and noted there would be medical treatment available in Pakistan. At paragraph 28 the judge said that the respondent accepted the first appellant had health problems. The judge notes this at paragraph 32 and refers to the evidence in the bundle as to her conditions and the treatment. The judge accepted that the sponsor and her son care for her. The judge recorded that medical treatment would be available to her in Pakistan albeit at a cost. The judge refers to evidence showing she had received treatment in the past in Pakistan . The judge referred to case law at paragraph 33 in respect of article 8 claims, indicating whilst health issues were a material consideration it was necessary to recognise the public interest in removal. The disparity of healthcare facilities would not outweigh this save for very rare cases .
21. The judge found that she could not satisfy the requirements of the immigration rules unless paragraph EX 1 or 276 ADE applied. The judge considered the definition of insurmountable obstacles and made the point that the appellants had been living in Pakistan until they came to the United Kingdom in June 2018. The judge commented that this was not an exceptional length of time and concluded they were both familiar was life and culture in Pakistan. Their sponsor, although settled here is also a Pakistani national. The judge saw no reason why he could not find work in Pakistan. The judge concluded by finding there were no

insurmountable obstacles to family life continuing in Pakistan. I cannot see any shortcoming in the reasons given by the judge for this conclusion.

22. The judge concluded paragraph 276 ADE did not assist the appellant. Regarding the second appellant, the judge made the point that his family life would continue if the family returned to Pakistan. Regarding his private life the judge did not see any significant obstacles to his reintegration. The refusal letter had referred to schools in Pakistan. At the time of the decision he was an adult.
23. Having dealt with the immigration rules and the exceptions therein the judge referred to article 8 on a freestanding basis. The judge referred to Agyarko [2017] UKSC 11. The judge referred to the need to have regard to the respondent's policy and the need for very strong or compelling claims to outweigh the public interest in immigration control. The judge referred to the Razgar sequence.
24. The judge said he had regard to part 5A of the Nationality Immigration and Asylum Act 2002. The judge did consider the public interest factors set out in section 117 B. It was not an error of law to repeat each factor separately provided the decision indicated they had been considered. I find this to be so. Clearly the judge was aware of this provision.
25. The judge dealt with proportionality and the balancing of the public interest against the individual's rights. The judge found the decision to be proportionate. The judge could have gone on to consider the specific features in section 117 B. However, there is nothing to indicate that these considerations were set out specifically; this would have made a material difference. The first appellant has not shown proficiency in English. The sponsor is claiming benefits which include an element in respect of the appellants, therefore there is an additional drain on the public purse. Furthermore, their immigration status was precarious. In AM (S 117 B) Malawi [2015] UKUT 260 it was held that the statutory duty to consider the matters set out in section 117 B are satisfied if the tribunal's decision shows it has had regard to such matters as are relevant. The judge's assessment of article 8 must be viewed having regard to the earlier assessment made under the rules. The judge was clearly viewing their article 8 claims through the prism of the rules and had referred to numerous relevant considerations. In conclusion I do not find a material error of law established.

Decision

I find no material error of law established. Consequently, the decision of First-tier Tribunal Judge Broe dismissing the appeals shall stand.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
16th of December 2023