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

Case No: UI-2023-000994

First-tier Tribunal No: HU/54605/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 18th of October 2023**

**Before**

**UPPER TRIBUNAL JUDGE JACKSON**

**Between**

**REHANA KOUSAR**
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr R De Mello of Counsel, instructed by ASH Immigration Services
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Heard at Field House by remote video means on 28 September 2023**

**DECISION AND REASONS**

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. This appeal was originally joined with that of Saqib Parvez, UI-2023-000993, HU/54068/2022, who was the Appellant's son. Mr Parvez has sadly passed away since his appeal was also granted permission to appeal thereby bringin an end to proceedings in respect of him. This does not however affect the Appellant's continuing appeal.

3. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Parkes promulgated on 6 January 2023, in which the Appellant's appeal against the decision to refuse her human rights claim dated 31 May 2022 was dismissed.

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4. The Appellant is a national of Pakistan, born on 10 January 1970, who applied for Entry Clearance to the United Kingdom to join Akhtar Parveez, her husband, on 21 December 2021.

5. The Respondent refused the application the basis that the Appellant did not meet the English language requirement in Appendix FM, paragraph EC-P 4.1 to 4.2 because she had not passed the required test and was not exempt by reason of disability or as a matter of practicality due to caring responsibilities. The Respondent did not consider that there were any exceptional circumstances to warrant a grant of Entry Clearance outside of the Immigration Rules.

6. Judge Parkes dismissed the appeal in a decision promulgated on 6 January 2013 on all grounds. It is recorded in paragraph 16 of the decision that it was accepted that the Appellants (as they then were) cannot meet the provisions of the Immigration Rules and the arguement that the Appellant could be in a better position to learn English once in the United Kingdom. The First-tier Tribunal considered that family life could continue as it has done for the last 25 years and that there was no reason why the Appellant's husband could not live in Pakistan and that would entail less disruption and possible social isolation; in a place where the Appellant's needs are currently being fulfilled. In the circumstances, the refusal did not amount to a disproportionate interference with Article 8 of the European Convention on Human Rights.

**The appeal**

7. The Appellant appeals on three grounds as follows. First, that the First-tier Tribunal erred in law in making findings as to the Appellant's wider family in circumstances where the Appellant's husband included details in his written evidence, no issue had been taken as to the wider family by the Respondent and no request was made for the Family Registration Certificate. Secondly, that the First-tier Tribunal erred in law in mis-recording a concession on behalf of the Appellant, it was only accepted that the Appellant had not passed an English language test but it was submitted that the exemption applied to her such that the Immigration Rules were met. Finally, that the First-tier Tribunal erred in law in failing to consider the two Appellants' appeals individually given the separate medical evidence, only considering them together.

8. In a rule 24 response, the Respondent opposed the appeal and noted that there was no evidence, by way of, for example, Counsel's minute from the First-tier Tribunal hearing, as to what submissions and/or concession was made to show any error in paragraph 16 of the First-tier Tribunal decision.

9. At the oral hearing, Counsel relied on the written grounds of appeal that there was a simple mistake of fact as to the Appellant's other son and a misunderstanding about the Appellant's concession. There was no skeleton argument on behalf of the Appellant before the First-tier Tribunal due to late instruction of Counsel and no written statement or note of hearing as to the submission because Counsel had only seen the Respondent's rule 24 response raising this just before the hearing.

10. Counsel for the Appellant also submitted that even had the concession been made and correctly recorded by the First-tier Tribunal, the same submissions would have been made in respect of the assessment under Article 8 that the Appellant should have been granted Entry Clearance with a condition that she should take steps to learn English and pass an English language test after arrival.

It was submitted that the refusal was disproportionate based on the medical evidence. It was said that these were the essence of submissions before the First-tier Tribunal.

11. On behalf of the Respondent, Mr Lindsay relied on the rule 24 response. It was accepted that there was a factual error about the Appellant's other son but it was not material to the outcome of the appeal in any way. As to the concession, it remained that there was no evidence of the Appellant's case before the First-tier Tribunal to show that the concession was wrongly recorded and it was inappropriate for Counsel to make submissions which amounted to giving evidence on this point. In any event, there is no error of law on the Article 8 assessment and the facts permitted only of one outcome for the appeal to be dismissed in circumstances where the Appellant could continue family life as it is now, or with her husband in Pakistan which would entail less disruption.

12. In reply, Counsel for the Appellant accepted that her husband could go to live in Pakistan, but that there was no further consideration of whether that would be pragmatic or practical given he lives and works in the United Kingdom and owned a property here. It was said that there was a wealth of evidence that it would be disproportionate, although none could be identified beyond the basic facts that the Appellant's husband lived here with accommodation available for the Appellant and there were other family members here. It should also have been considered that all parts of the Immigration Rules except for the English language requirements were met, which would reduce the relative strength of the public interest.

## Findings and reasons

13. The first ground of appeal is made out, the First-tier Tribunal made a mistake of fact when finding in paragraph 15 that it was not clear that the full position of the family had been given in evidence. The matters referred to here were in fact covered in the Appellant's husband's written statement and were therefore in evidence before the First-tier Tribunal. However, there is nothing material in that point which did not feature at all in the reasons given for the appeal being dismissed and could not on any view have been material to the outcome.

14. The second ground of appeal essentially amounts to a dispute as to what the Appellant's position was before the First-tier Tribunal and whether or not there was a concession that she did not meet the requirements of Appendix FM of the Immigration Rules, or a concession only that she did not have an English language test certificate but otherwise met the exemption provisions in Appendix FM. If the concession was correctly recorded, there is no error of law.

15. The Appellant's ground of appeal relies on an assertion that the First-tier Tribunal misunderstood and incorrectly recorded the concession in paragraph 16 of the decision. There is however no evidence to support that. It would normally be sufficient to look to the Appellant's skeleton argument for confirmation of the position before the First-tier Tribunal but none was produced in these appeals. In the alternative, one would expect either a copy of Counsel's minute from the hearing or a written statement confirming the submissions made. Neither is available in this appeal and it was not a sufficient response to say the absence of such evidence was because the Respondent's rule 24 notice had not been received before the hearing. Whilst Mr Lindsay could find nothing to suggest it had been sent other than to the Upper Tribunal, it was not necessary for this to be a point relied upon by the Respondent, it is one which should have been

known to the Appellant's legal representatives even when drafting grounds of appeal. What in effect therefore happened at the hearing before me, was Counsel for the Appellant in essence giving evidence as to what his submissions were before the First-tier Tribunal, contrary to the guidance in BW (witness statements by advocates) [2014] UUT 568. That was not appropriate, an advocate must never assume the role of witness.

16. The position is therefore that there is no evidence before me that the concession on behalf of the Appellant was limited to an acceptance that she had not passed an English language test but a submission that in any event the requirements of the Immigration Rules were met because she was exempt. In the absence of any such evidence, I do not find any error of law in paragraph 16 of the First-tier Tribunal's decision or otherwise in the approach taken to the appeal on Article 8 grounds that the rules were not met.

17. The final ground of appeal is that the First-tier Tribunal erred in failing to give separate consideration to each of the Appellants' claims based on their individual medical evidence. There is nothing of substance in that ground either. The submission on this point was recorded in paragraph 16 but found that it was difficult to see how that could be done given the inter-reliance of each Appellant on each other and each other's claims. However, there is in any event a focus on the position of the remaining Appellant when considering the proportionality balancing exercise (appropriately so given the evidence of the her son's almost complete dependence on her) and separate consideration as to the disruption of relocating and medical needs of the Appellant's son. There were no substantive submissions as to why this approach was inadequate or could possibly amount to an error of law on the factual circumstances of the claims presenting to the First-tier Tribunal.

18. The further points made by Counsel in reply add nothing to this argument or generally either. There was little evidence in the Appellant's side of the balancing exercise for the purposes of Article 8 and the overall conclusion in relation to the Appellant that the refusal of Entry Clearance was not a disproportionate interference with Article 8 is one which was not only unarguably lawful, but inevitable on the facts.

**Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**9th October 2023**