IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001227
UI-2023-001228
First-tier Tribunal No:
HU/57293/2022
HU/57296/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 13 June 2023

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellants

and

(1) Mr SYED ALI ALAM JAFFERY
(2) Mrs RIZWAN FATIMA
(NO ANONYMITY DIRECTION)

Respondents

Representation:
For the Appellant: Mr C Avery, Senior Home Office Presenting Officer
For the Respondents: Mr S Karim, Counsel
(instructed by AWS Solicitors)

Heard at Field House on 09 June 2023

DECISION AND REASONS

1. Permission to appeal was granted to Secretary of State for the Home Department by First-tier Tribunal Judge Barker on 23

April 2023 against the decision to allow the Respondents' linked Article 8 ECHR private and family life appeals under paragraph 276ADE(1)(vi) of the Immigration Rules made by First-tier Tribunal Judge Wylie in a decision and reasons promulgated on 11 February 2023.

2. The Respondents, husband and wife, nationals of Pakistan born respectively on 9 November 1946 and 11 August 1950, had applied for leave to remain on human rights grounds (Article 3 ECHR and Article 8 ECHR) on 6 August 2021. Their applications were refused by the Secretary of State for the Home Department on 3 October 2022.

3. The Respondents had entered the United Kingdom on 24 August 2020 with Five Year Family Visit Visas valid from 19 October 2016 to 19 October 2021. On 15 February 2021 they were granted leave to remain in exceptional circumstances due to the Covid 19 pandemic until 31 March 2021, which exceptional leave to remain was extended in several stages until 8 August 2021.

4. Judge Wylie dismissed the Respondents' Article 3 ECHR claims, which were based on their health and the availability of treatment and care in Pakistan. Judge Wylie went on to allow the Respondents' Article 8 ECHR claims, finding that paragraph 276ADE(1)(vi) of the Immigration Rules was met. The judge found that there would be very significant obstacles to the Respondents' reintegration in Pakistan, despite the undoubted fact that they had spent almost all their lives there. The reasons given by the judge, largely on the basis of the expert evidence, were in summary that (a) there was a lack of appropriate and suitable social care available in Pakistan; (b) the Respondents had no family in Pakistan able to support them; (c) the Respondents were unable to look after one another because of their frailty and weakness, and (d) the Respondents were emotionally and psychologically reliant on their family in the United Kingdom.

5. Permission to appeal was granted by First-tier Tribunal Judge Barker because it was considered arguable that the judge's approach to the assessment of paragraph 276ADE(1)(vi) was flawed. It was arguable that the judge had reached contradictory findings, in that the judge had found when considering Article 3 ECHR that there was adequate care available to the Respondents, yet had reached the opposite conclusion when considering Article 8 ECHR. The judge had failed to consider whether the Respondents' family members could accompany the Respondents to Pakistan to provide any

care required. If the judge had considered that point she had failed to provide any adequately reasoned findings about it.

6. The Respondents filed a rule 24 notice dated 2 May 2023, opposing the onwards appeal. It was submitted that the Appellant's grounds of appeal amounted to no more than an expression of disagreement with the judge's properly reasoned decision. The test applicable to Article 3 ECHR health claims carried a high threshold, as shown in AM (Zimbabwe) [2020] UKSC 17. The judge found that threshold (serious, rapid and irreversible decline in health causing intense suffering or a significant reduction in life expectancy) was not reached. That test stood in contrast to the requirements laid down in paragraph 276ADE(1)(vi), which was whether reintegration was possible without very significant obstacles. The Secretary of State had confused the two issues. The judge's findings as to the level of care required by the Respondents had not been challenged. The judge applied the guidance concerning integration given in Kamara [2016] EWCA Civ 813. Her findings were open to her. The evidence before showed that the Respondents were unable to travel. The only care facilities available in Pakistan were single sex so the Respondents would be separated, i.e., interfering with their family life.

7. As to Secretary of State's other grounds of appeal, the judge had addressed section 117B of the Nationality, Immigration and Asylum Act 2002, but the appeals were based primarily on family life, not private life. The public interest in immigration control had been addressed. The Respondents' presence in the United Kingdom had always been lawful with appropriate leave to remain. The judge found that the Respondents were being supported by their family in the United Kingdom. The judge also found that the Respondents would be entitled to entry clearance as Adult Dependent Relatives if they had applied from abroad under the Immigration Rules. It was incorrect to say that the appeals had been allowed on the basis of the Respondents' emotional needs. Rather the judge had found that there was family life exceeding normal emotional ties, which finding again had not been challenged. There was no error of law and the determination should be upheld.

8. Mr Avery for the Appellant relied on the grounds of appeal and the grant of permission to appeal and submitted that the judge had reached contradictory findings as to the level of care available to the Respondents in Pakistan. Why she had reached a conclusion adverse to the Respondents under Article 3 ECHR yet a positive conclusion under Article 8 ECHR was difficult to follow. There had been inadequate consideration of

the evidence and inadequate reasoning. The fact that the Respondents might satisfy the Adult Dependent Relative provisions of Appendix FM was not relevant as they were not making that application. The public interest had been insufficiently considered. The judge's determination was unsafe and should be set aside. The error of law appeal should be allowed.

9. Mr Karim for the Respondents relied on the rule 24 notice which he had settled. The judge had given accurate self directions or reminders at each separate stage of the appeals, correctly distinguishing the tests for Article 3 ECHR health cases from Article 8 ECHR reintegration cases. The Article 3 ECHR test had a lower standard of proof but had a high threshold. The 276ADE(1)(vi) reintegration test included the ability to conduct ordinary day to day life, for the particular individuals concerned. That was not possible for the Respondents as the judge's finding was that only segregated care units were available in Pakistan. It was not a question of contradictory findings but rather of distinct findings based on different requirements.

10. None of the judge's key findings of fact had been challenged, e.g., the absence of relatives in Pakistan. The judge's findings had been based on solid evidence, e.g., the GP's letter which stated that neither the Respondent was fit to travel. The judge had addressed the public interest, including financial issues. The judge's findings that this was an exceptional situation were open to her and were sustainable.

11. In reply, Mr Avery reiterated that the Appellant's position was that there were obvious discrepant findings.

12. Despite Mr Avery's customarily succinct and focussed submissions on behalf of the Secretary of State, the tribunal finds that there was no error of law in Judge Wylie's decision, so that the onwards appeal must be dismissed. The tribunal accepts the submissions made by Mr Karim, which in summary demonstrate that the Appellant's grounds of appeal amount in the end to no more than disagreement with the decision reached by the experienced judge.

13. In particular, the tribunal finds that the judge applied the correct test to the Article 3 ECHR health claim, which was dismissed and of which dismissal the Respondents make no complaint. The reintegration test set out in paragraph 276ADE(1)(vi) of the Immigration Rules is distinctly different and the conclusions reached by the judge were based on a substantial body of evidence deserving of weight, including

independent medical evidence and expert evidence. Those conclusions might well be the subject of disagreement, as is often the position in Article 8 ECHR appeals where a range of reasonable opinions may exist, but they are hardly surprising, are far from irrational and were open to the judge on the evidence presented. Here the tribunal notes that Secretary of State was not represented at the First-tier Tribunal, yet the judge explored the evidence with appropriate care. The sad truth is that persons of the age and state of health that the Respondents were at the time of their last entry into the United Kingdom are prone to decline, sometimes quite rapidly, as the medical evidence in these appeals indicates. The facts as found do not suggest more than a post arrival change in circumstances.

14. In terms of the important public interest in immigration control, the judge noted that both the Respondents had at all times been in the United Kingdom lawfully, that their initial stay had been prolonged by circumstances beyond their control (the Covid-19 pandemic) and that in time extensions had been sought and granted. Public funds were not at risk as the Respondents were being supported by close family members in the United Kingdom. Section 117B considerations were not strictly relevant because the Respondents were not seeking to rely on their private life, which was of brief duration in the United Kingdom. The judge referred to the Adult Dependent Relative provisions of Appendix FM by way of a further consideration of the public interest. This was not to be understood as an oblique reference to Chikwamba [2008] UKHL 40, as the Respondents had not made an ADR application.

15. Mr Avery did not pursue the assertion made in Secretary of State's grounds of appeal that the possibility that the Respondents' relatives could accompany them to Pakistan should have been considered by the judge. That in the tribunal's view was the right course. The evidence showed that the Respondents' adult children all had lives long established in the United Kingdom. It was obviously so completely unrealistic for any of them to move to Pakistan that the judge had no need to consider the matter.

16. In the tribunal's judgment the experienced First-tier Tribunal Judge reached sustainable findings, in the course of a through and balanced determination.

DECISION

The appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

Signed **Dated** 13 June 2023

R J Manuell
Deputy Upper Tribunal Judge Manuell