



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

Case No: UI-2023-003255  
First-tier Tribunal No: HU/56357/2022

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:  
On the 25 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

NUDRAT AHMED  
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE  
FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr H Malik, Counsel instructed by Nasim & Co Solicitors  
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**Heard at Field House on 21 September 2023**

**DECISION AND REASONS**

1. The appellant appeals against the decision of the First-tier Tribunal (FtT) Judge Feeney (the Judge) dated 15 June 2023. The appellant (a citizen of Pakistan) had applied for leave to enter the UK on Human Rights grounds, claiming that she is the adult dependent sister of her brother (a UK national). The application was refused by the respondent on 6 September 2022 on the basis that neither was paragraph E-ECDR 2.5 of Appendix FM to the Immigration Rules met, nor did the respondent consider that there were exceptional circumstances. The appellant appealed to the FtT where the appeal was dismissed.

**In the First-tier Tribunal**

2. The appellant's case in the FtT was that the appellant has cerebral palsy and has been looked after by her mother since birth. Her mother can no longer care for her due to her age, frailty, and health conditions.
3. In the FtT the respondent accepted that art 8 is engaged on the basis of family life, but took issue with E-ECDR 2.5 of Appendix FM to the Immigration Rules (proof of an inability to

obtain care for the appellant in the country where they are living) being satisfied. If the Judge found themselves unsatisfied that this requirement was met, the Judge was asked to consider whether art 8 was satisfied outside the rules.

4. The Judge concluded that the evidence as a whole did not show that the appellant's mother was no longer able to care for the appellant. In addition, the Judge was not satisfied that care outside the family was not available or affordable. Therefore, found the Judge, the requirements of the Immigration Rules were not met. Having considered a number of factors, the Judge went on to conclude that the interference with the appellant's art 8 rights was proportionate. The Judge therefore dismissed the appeal.

### **In the Upper Tribunal**

5. The appellant appealed, and was granted permission, on two grounds:
  - a. That the Judge drew inferences that alternative family members in Pakistan could provide the necessary emotional and physical support to the appellant, and didn't properly take into consideration the appellant's condition and whether family members are willing to provide care.
  - b. That the Judge failed to give adequate consideration to the fact that there is no suitable care available in the appellant's home country which is accessible to the appellant.
6. At the start of the hearing, I confirmed with the appellant that these were the grounds of appeal
7. The appellant submitted in the first ground that that Judge accepted the appellant uses sign language and that only her family can understand her. The judge also heard evidence that family members could help with her care "once or twice" but not daily because they were busy with their own lives. The Judge concluded that there is some family support available. The appellant pleads that the ability of family members to look after the appellant was not adequately analysed by the Judge in light of the extent of the appellant's medical conditions.
8. The judge outlines the medical condition of the appellant's mother at [7], which includes renal failure, breathlessness, extreme fatigue, chest pain, high blood pressure and angina. The appellant states that the judge fails properly to reason how the appellant's mother would be able to teach sign language to any new carer in order to communicate with the appellant.
9. The appellant further says that it was unreasonable for the judge not to draw inferences that the appellant's mother cannot care for the appellant from the evidence on the appellant's mother's mental and physical health.
10. In respect of the second ground, the appellant states that reference was made to Home Office Policy Guidance: Pakistan: Medical and healthcare provisions, which gives information on the availability or otherwise of relevant medical care. I cannot see that this guidance was in evidence before the FtT and the Judge does not indicate in the decision that this guidance was referred to in arguments.
11. The respondent submitted that there is weight in respect of the appellant's submissions, in particular on her mother's medical conditions and the care that her mother herself needs. The respondent submitted that there is a need for further fact finding in respect of how the appellant communicates - whether it is a standard form of sign language or a bespoke form

of sign language (which would be relevant to the likelihood of being able to find a carer to assist). The respondent conceded that there is a material error in the findings of the Judge.

12. I am unpersuaded that the second ground of appeal is made out. The Judge cannot be expected to take into consideration policy (or any other material) which is not brought to their attention in the hearing.
13. I remind myself of the guidance in MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC) at [11] and [6] that the depth and extent of the duty to give reasons will inevitably vary from one case to another, but that there is a duty to explain the tribunal's assessment of the more important pieces of evidence and to provide reasons for choosing to give no, little, moderate or substantial weight to the evidence.
14. In addition, it is not necessary to deal expressly with every point, but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered (Simetra Global Assets Limited v Ikon Finance Ltd & Others [2019] EWCA Civ 1413 at [46]).
15. Having considered the submissions and concession by the Respondent, and reviewing the Judge's reasons, I am persuaded that the judge has insufficiently reasoned the conclusion on the availability of other family members to give an appropriate level of care. It appears on the judgment and evidence before the FtT that the contrary conclusion could have been reached and, in those circumstances, there was a need for the judge to give a deeper reasoning for the conclusions than appear in the FtT determination. I make very clear that I do not find it inevitable that the Judge should have come to a different conclusion - merely that the decision that was arrived at is insufficiently reasoned in the FtT determination. Further, the Judge has insufficiently reasoned why the medical evidence (which was limited but was indicative of the appellant's mother being in poor mental and physical health), combined with the witness evidence the the appellant's mother cannot care for the appellant, does not lead to the conclusion that the appellant's mother cannot care for her.
16. I conclude that this amounts to a material error. I accept the submission before me that the level of fact-finding required is such that remittal to the FtT is appropriate. I remit the case with no preserved findings of fact.

#### **Notice of Decision**

17. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
18. The case is remitted t the First-tier Tribunal.
19. No findings of fact are preserved.
20. There is no order for anonymity

*D Cotton*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

18 October 2023