IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003726

First-tier Tribunal No: HU/56649/2022
IA/10165/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE BOWLER

Between

MS KAUSER UN NISA
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J. Gajjar instructed by Imperium Chambers
For the Respondent: Mr S. Walker, Senior Presenting Officer

Heard at Field House by Microsoft Teams on 10 November 2023

DECISION AND REASONS

This has been a remote hearing. The form of remote hearing was V (video). A face to face hearing was not required in the circumstances because the parties were represented, no evidence would be heard and all of the issues could be determined in a remote hearing.

1. In a decision ("the Decision") issued following a hearing on 3 August 2023 First-tier Tribunal Judge Hillis ("the Judge") dismissed the Human Rights appeal of the Appellant. In a decision dated 4 September 2023 First-tier Tribunal Judge Moon granted permission to appeal on the basis that it was arguable that the Judge erred in failing to explain why a finding that the Appellant satisfied the Immigration Rules was not positively determinative of her Human Rights appeal.

The FTT Decision

2. The Judge said in the Decision at [20]:

   "I have carefully read Mr. Chakraborty's report dated 15th July, 2022 and accept his findings … that the Appellant was not orientated as to date, time or year and was effectively unable to communicate any detailed history to him and simply told him that her
   sister-in -law helps her with her daily activities. He concluded that she was "significantly disabled as a result of her cognitive impairment, visual impairment, psychological state and physical frailty."

3. The Judge went on to say at [21]:

   "I conclude on the basis of the medical evidence that the Appellant would face very significant obstacles in her re-integrating into society in Pakistan based on the guidance in the authorities."

4. The Judge then proceeded to carry out a separate consideration of the Appellant's human rights appeal concluding that she could return to Pakistan to make a fresh application from there as a dependant relative. The Judge concluded that as a result the Appellant's appeal was dismissed.

   The Appellant's Grounds of Appeal

5. At the heart of the Appellant's grounds of appeal is the submission that the Judge failed to apply the principles set out in *TZ Pakistan v. SSHD* [2018] EWCA Civ 1109; namely that where an individual satisfies the requirements of the Immigration Rules that will be positively determinative of their case provided that Article 8 is engaged. There had been no challenge by the Respondent to the Judge's findings and in particular his finding that the Appellant would face very significant obstacles to reintegration into Pakistan. Consequently, the principles of *TZ Pakistan* should be applied.

   The Response of the Respondent

6. No Rule 24 response had been provided by the Respondent. Mr Walker confirmed that there was no challenge to the Judge's finding that there would be very significant obstacles to the Appellant's reintegration into Pakistan. It was accepted that such finding was in accordance with the evidence provided at the FTT hearing and in particular, the extensive medical report which had not been seen before the hearing by the Respondent. Given that this meant that the Appellant was found to have satisfied the requirements of the Immigration Rules for leave to remain, the Respondent conceded that there was a material error of law in the Decision. Furthermore., given the clear position in law having regard to *TZ Pakistan,* the Respondent did not seek a rehearing of the case and conceded that a decision should be taken to set aside the decision of the Judge and to substitute it with a decision allowing her appeal.

   My decision

7. The Respondent has not challenged the Judge's findings; in particular, the findings that the Appellant would face very significant obstacles to reintegration in Pakistan. The Respondent has conceded that there was a material error of law in the Decision.

8. Consequently, the Decision must be set aside.

9. The parties submitted that a remaking of the decision should take place forthwith. I was satisfied that in the circumstances of this case it was not in the interests of fairness and justice for there to be a separate rehearing of the appeal. The following decision was outlined to the parties at the hearing.

10. The case law in *TZ Pakistan* (as confirmed in *Begum (employment income; Rules/Article 8)* [2021] UKUT 0115 (IAC)) is clear about the approach in a case such as this. As stated in *TZ Pakistan* at [34]:

> "Where a person satisfies the rules, …, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

11. The Judge found that Article 8 was engaged and this is also not challenged by the Respondent.

12. There are no factors such as those identified in the case of *Begum* which would weigh against the ordinary conclusion that the satisfaction of the Immigration Rules is positively determinative. In particular, the judge's consideration of whether the Appellant could or should make an application from Pakistan as an adult dependent relative is not relevant where she already satisfies the Immigration Rules for leave to remain in the UK.

13. Accordingly, the Appellant's appeal is allowed.

Notice of Decision

1. The decision of First-tier Tribunal Judge Hillis is set aside.
2. The appeal is allowed on human rights grounds.
3. A fee award is not appropriate given that the decision followed the provision of evidence for the hearing to which the Respondent had not previously been referred.

T. Bowler

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25/11/2023