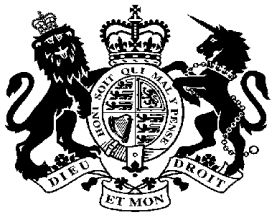

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2023-005614**

FTT No: HU/51983/2022
IA/03065/2022

THE IMMIGRATION ACTS

Decision and Reasons
Issued
On 9 September 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS FARIZA BEGUM
(NO ANONYMITY DIRECTION MADE)

Respondent

Heard at Field House on 27 August 2024

Representation:
For the Appellant: Ms M Hussain, Solicitor
(Maya Solicitors)
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. For clarity the parties to this appeal will be referred to by their designations as in the First-tier Tribunal. Permission to appeal was granted to the Secretary of State for the Home Department by First-tier Tribunal

Judge Chinweze on 4 January 2023 against the decision to allow the Appellant's Article 8 ECHR appeal made by First-tier Tribunal Judge Chohan in a decision and reasons promulgated on or about 23 November 2022.

2. The Appellant, a national of Pakistan born on 1 January 1954, had applied for leave to remain outside the Immigration Rules on Article 8 ECHR private and family life grounds. Her application was refused by the Secretary of State for the Home Department on 15 March 2022.

3. The Appellant entered the United Kingdom on 29 April 2018 as a visitor. She overstayed her visa and it was not until 23 February 2021 that she made her application which is the subject of this appeal. The Appellant's claim was based mainly on her poor and deteriorating health. The Respondent rejected the Appellant's claim on the basis that she could receive appropriate treatment in Pakistan where she had friends and family and could be supported by family in the United Kingdom, as previously. In the United Kingdom, the Appellant lives with her son and sponsor, Mr Tahir Iqbal. The sponsor has a wife and three children. The Appellant also has, in the United Kingdom, another son, Mr Shahid Iqbal, and a daughter, Ms Haleema Khan.

The First-tier Tribunal Judge's decision

4. After reviewing the evidence, which included medical evidence in the form of two reports as well as NHS records, and after noting that there was no country background evidence produced about the availability of care in Pakistan, First-tier Tribunal Judge Chohan found that paragraph 276ADE(1)(vi) of the Immigration Rules was met.

5. The Judge said:

> "15. I give due weight to the two medical reports, the substance of which remain unchallenged. In view of those reports and the evidence of the sponsor, I accept that the Appellant is bedridden and requires constant help and assistance from the sponsor and his family. The medical evidence suggests that the Appellant is unable to look after herself. If the Appellant were to be returned to Pakistan (assuming she is fit to fly) it seems impossible that the Appellant would be able to take care of herself, let alone integrate.
> 16. For the reasons set out above, this is a case of more than mere hardship, difficulty or upheaval. Accordingly, I

find that the Appellant would face very significant obstacles to integration if she were to be removed to Pakistan…
17. The fact that the appellant meets the requirements of paragraph 276 ADE(1)(vi), means that there is little I can add in respect of Article 8. Much of what I have stated above is relevant here. Furthermore, the Appellant requires the physical and emotional support of her family in the United Kingdom in view of her health issues. That is not a mere assertion, but is supported by medical evidence. Having had the benefit of hearing oral evidence from the sponsor, I found him to be sincere and genuine; he is a loving son who simply wishes to look after his elderly mother who is in poor health both physically and mentally.
18. Hence, I find that Article 8 is engaged in respect of both family and private life both family and private life and removal of the Appellant would be a disproportionate interference. I appreciate that there is a public interest in maintaining effective immigration controls, but on the facts and evidence of this case, and bearing in mind that the Appellant meets the requirements of paragraph 276ADE(1)(vi), that is outweighed by the appellant's interests."

The grant of permission to appeal

6. On any view this was a sad case concerning an elderly widow and Judge Chohan's decision to allow the appeal was perhaps hardly a surprising one. Nevertheless Secretary of State challenged the Judge's decision and obtained permission to appeal from First-tier Tribunal Judge Chinweze. When granting permission, Judge Chinweze stated: -

7. "The grounds assert that the Judge erred in failing to give adequate reasons why the Appellant could not integrate into Pakistan and materially misdirected himself by failing to consider section 117B of the Nationality Immigration and Asylum Act 2002 (the 2002 Act), in deciding that the refusal decision was a disproportionate interference with the Appellant's Article 8 right to a private life.

8. "It is arguable that the Judge gave inadequate reasons for finding that the Appellant faced very significant obstacles to integrating into Pakistan. The Judge based his decision primarily on two medical reports dated 31 March 2021 and an undated medical report from the Appellant's GP who visited the Appellant on 22 August 2022. [10] and [11]. The May 2021 medical report

referred to the Appellant's suffering soft tissue injuries to her back and right spine and that she was unfit to fly. The GP report stated the Appellant had pelvic and spinal fractures. The Judge does not deal with how the GP concluded the Appellant was suffering from fractures without having access to X rays and in the light of the previous diagnosis of soft tissue injuries. Further the Judge made no findings as to the length of time the Appellant would be unfit to fly and whether this was a temporary or permanent incapacity.

9. "It is also arguable that the judge gave inadequate reasons for concluding the Appellant could not receive adequate medical care and support in Pakistan. At [14] of his decision the Judge accepted that no objective or expert evidence had been submitted to establish that the Appellant would not be able to secure appropriate medical care and treatment in Pakistan. He accepted the assertion of the sponsor that the Appellant's daughter was not able to look after the Appellant for cultural reasons but made no findings as to what these cultural reasons were or why they made it impossible for the Appellant to be cared for. The Judge accepted the Appellant's daughter lived 400 miles from the Appellant [in Pakistan] but did not give any reasons as to why the Appellant could not move in with her daughter.

10. "Finally, the Appellant was an over stayer having arrived in the United Kingdom in 2018 on a six-month visitor visa. The Judge did not refer to section 117B (1) of the 2002 Act and the need to balance the public interest in the maintenance of effective immigration control against the Appellant's Article 8 rights. As the appeal concerned the Appellant's article 8 rights outside the rules, it is arguable the Judge materially misdirected himself by not referring to the 2002 Act. The decision discloses an arguable error of law and therefore permission is granted."

Submissions

11. Ms Ahmed for the Respondent applied for permission to amend the grounds of appeal dated 30 November 2022. She recognised that the application was late but submitted that the amended grounds clarified the issues. Ms Hussain had not seen the amended grounds. To some extent the amended grounds filled out the existing grounds, save for the allegation of perversity which could have been raised in the original grounds if it had been thought to have had any merit. The Tribunal

refused the application because it was seriously late without any satisfactory explanation.

12. Ms Ahmed for the Respondent relied on the original grounds and grant of permission to appeal. Ms Ahmed submitted that the Judge had accepted the Appellant's submissions about Pakistani culture and the Appellant's daughter without any country background evidence on which to base his findings. These were not matters of which judicial notice could be taken. Dr Dosani's medical report had been challenged and the Judge had not addressed the Respondent's submissions. There had been no discussion of the availability of treatment for the Appellant in Pakistan and the Judge had not addressed that issue either.

13. The Judge had given inadequate reasons for his wholesale acceptance of the medical evidence. On the issue of whether or not the Appellant was in fact bedridden as claimed, the Judge had not addressed the Respondent's submissions. The question of whether the Appellant was able to reintegrate in Pakistan required a factual evaluation of not only her condition and consequent needs but also of the support available to her in Pakistan. The decision was inadequate and should be set aside and the appeal reheard.

14. Ms Hussain for the Appellant resisted the appeal. Ms Hussain submitted that the dispute was over the evidence before the Judge, who had heard oral evidence. It was never disputed that the Appellant was an overstayer. She was reliant on her son with the support of her daughter in law, as the Judge's summary of the evidence showed. The two doctors had seen and examined the Appellant, as the Judge had recorded. The Judge had accepted their evidence and given sufficient reasons for doing so. The Appellant's son had given evidence that his sister in Pakistan could not help, which was the evidence before the Judge which the Judge had given reasons for accepting. The Home Office had been aware of the Appellant's ill health which was the reason she had not been reporting. Additional information could have been sought.

15. It was plain that the Judge was aware of the public interest element of Article 8 ECHR. Although he had not expressly referred to Section 117B of the Nationality, Immigration and Asylum Act 2002, that had informed his decision. The Judge had referred to the Appellant's illegal overstay, which was plainly in his mind. The Upper Tribunal should not lightly interfere with a first

instance judge's decision, which should be allowed to stand.

16. In reply, Ms Ahmed submitted that the fitness to fly question was an operational one and the Appellant's emphasis on the doctor's opinion to that effect was misplaced. The Judge had conflated the requirements of the Adult Dependent Relative provisions of Appendix FM with paragraph 276ADE(1)(vi) of the Immigration Rules. This was not a case where it was suggested that the daughter in Pakistan should be forced to help but rather that her situation had been insufficiently explored in the evidence. The public interest as outlined in section 117B had been insufficiently considered.

Discussion and decision

17. Article 8 ECHR appeals involving elderly parents are invariably difficult. Like most Article 8 ECHR appeals they are intensely fact sensitive. The typical situation, as seen in the present appeal is of children leaving their home country for greener pastures elsewhere, while their parents are still in good health and active, until the inevitable day comes when their parents (or the survivor of them) have become frail and need at least some degree of assistance. The public interest issues such as NHS health care costs are significant, especially when (as in the present appeal), immigration control arises. The Appellant's entry had been for the purpose of a family visit, with a declared intention of returning to the Appellant's long term home, but what followed was an overstay of several years for which no satisfactory explanation was provided.

18. Having heard submissions, the Tribunal has concluded that unfortunately the Judge was provided with insufficient evidence by the Appellant to justify his decision to allow the appeal in the face of the terms of the decision set out in the reasons for refusal letter. As the Judge noted at [14] of his decision, no country background evidence (also known as objective evidence) was provided by the Appellant as to the availability of home help, live-in carers or care homes in Pakistan. There was no evidence of any steps the Appellant's family had taken to research such matters. There was no evidence from the Appellant's daughter in Pakistan as to why she could not look after her mother or help supervise her care. There was no evidence to support the Judge's finding that cultural issues arose and what they might be were insufficiently identified. These are all serious defects in the decision.

19. The issue under paragraph 276ADE(1)(vi) of the Immigration Rules of whether the Appellant could reintegrate into Pakistan where she had lived for almost all her life required careful consideration of what care she needed and what could be made available, i.e., the matters referred to in the preceding paragraph. The Judge gave some consideration to the level of care need but not to its availability and affordability in Pakistan. The challenge to the medical evidence raised by the Respondent were insufficiently addressed. The fact that the Appellant might prefer her care to be provided by her family was not a choice open to her if she was unable to meet the ADR rules, which of course she could not as she needed to obtain entry clearance and pay the appropriate application fee in order to settle, among other matters. On the face of the evidence at least two of the Appellant's children in the United Kingdom were contributing to her care and could afford to do so. Nevertheless no consideration was given to their meeting the cost of the Appellant's care in Pakistan. It was not open to the Appellant's children, however selfless and well intentioned, simply to facilitate their mother's stay in the United Kingdom without proper leave.

20. There was no express mention by the Judge of section 117B which mandates consideration of the public interest in the Article 8 ECHR proportionality balancing exercise, both generally and in relation to private life which the Judge considered was inseparable from family life in the present appeal. The nearest public interest consideration is reached in the decision is perhaps in [18], but it must be regarded as inadequate given the terms of the reasons for refusal letter which the First-tier Tribunal was required to address.

21. The Tribunal considers that there is no alternative to a full rehearing as the material errors of law go to the heart of the case. As it is an Article 8 ECHR appeal, updated evidence may be needed for the rehearing.

NOTICE OF DECISION

The Secretary of State's appeal to the Upper Tribunal is allowed.

There was a material error of law in the First-tier Tribunal's decision and reasons, which is accordingly set aside, with no findings preserved.

The Appellant's appeal shall be reheard before a First-tier Tribunal judge at the Birmingham hearing centre (excluding First-tier Tribunal Judge Chohan).

Signed **R J Manuell** **Dated** 28 August 2024

Deputy Upper Tribunal Judge Manuell