



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-002059

First-tier Tribunal No:
HU/59730/2022
LH/05566/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 5 December 2024**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**Ms Sofia Barkat
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the Appellant: Mr E Nicholson, instructed by Ash Immigration Services Solicitors

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 23 August 2024

DECISION AND REASONS

INTRODUCTION

1. The appellant is a national of Pakistan. She arrived in the UK on 11 August 2020 with leave to enter as a spouse. On 29 June 2021 she made an in-time application for leave to remain on the basis of her family life with her partner, Mr Abdul Majid. The application was refused by the

respondent on 29 November 2022. In summary, the respondent concluded the appellant cannot meet the eligibility relationship requirement set out in Appendix FM of the immigration rules. The respondent referred to information received confirming that the appellant and Mr Majid had separated and were no longer in a genuine and subsisting relationship. The respondent also concluded that the appellant fails to meet the eligibility financial requirement. Finally the respondent concluded that the appellant cannot satisfy the requirements for leave to remain on private life grounds and that there are no exceptional circumstances that warrant the grant of leave to remain outside the immigration rules.

2. The appellant's appeal against the respondent's decision was dismissed by First-tier Tribunal ("FtT") Judge Mills ("the judge") for reasons set out in a decision promulgated on 18 January 2024.
3. The appellant claims the decision of the judge is vitiated by material errors of law. Two grounds of appeal are relied upon. First, the appellant claims the judge fundamentally erred by disregarding the mental health challenges faced by the appellant's husband, despite the plea that he should be treated as a vulnerable witness. Second, in rejecting the appellant's account that his sister forged his signature because of the absence of a report to the police, the judge failed to have regard to the sponsor's vulnerability and mental health issues. The appellant claims that the judge failed to recognise that the sponsor refrained from reporting matters to the police to maintain ties with the extended family. The appellant claims that although the judge referred to the absence of evidence from the cousin and an uncle, those witnesses have now provided a statement and are willing to attend a hearing to support the appellant. The appellant claims the judge overlooked evidence regarding the sponsors mental health in reaching his decision.
4. Permission to appeal was granted by FtT Judge Kudhail on 8 May 2024. She said:

"The ground 1 and 2 assert that the Judge erred in failing to accept the appellant and sponsor as vulnerable witnesses in light of medical evidence and failed to take this into account in making credibility findings. At paragraph 36, the Judge does refer to the medical evidence and accepts the appellant has depression and there were safeguarding concerns. The Judge does appear to refer to this medical diagnosis when making the credibility findings referred to in ground 2. It is arguable there has been an error of law."

THE HEARING BEFORE ME

5. Before I turn to the submissions made by Mr Nicholson at the hearing before me, I record that the Tribunal has been provided with a skeleton argument settled by Mr Ramby de Mello dated 9 August 2024. He refers to the *Joint Presidential Guidance Note No.2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance* and submits that although the medical evidence before the Tribunal was sparse, it suggested the witness was potentially vulnerable. I have also been provided with a statement by Mr

Ashraf Ali who represented the appellant before the FtT. He states that at the commencement of the hearing he made representations to the judge that the sponsor has mental health issues. The judge is said to have asked whether he should be treated as a vulnerable witness, to which Mr Ali claims to have responded; "it should be taken into consideration".

6. Mr Nicholson submits the central issue in the appeal is the vulnerability of the sponsor. The judge was told the sponsor's mental health should be taken into account in the assessment of his evidence. I invited Mr Nicholson to draw my attention to the evidence before the FtT regarding the sponsor's health. Mr Nicholson drew my attention to the discharge letter issued by University Hospitals Birmingham confirming the sponsor was admitted to hospital on 8 August 2021 and discharged on 6 September 2021, that is at pages 41 to 44 of the consolidated bundle. The letter confirms a *'Temporary dialysis line femoral insertion (left)'* was performed on 28 August 2021. The letter refers to co-existing medical conditions and refers to "Depressive episode, unspecified". The letter states; *"He has ongoing safeguarding concerns, which were raised during this admission, Discussed with adult safeguarding team, who will arrange for a social services review"*. When pressed, Mr Nicholson accepted there was no further evidence before the Tribunal regarding the appellant's mental health, and vulnerability, or to support a claim that his oral evidence must be treated with a degree of caution.
7. Nevertheless Mr Nicholson submits that once the judge's attention was drawn to the vulnerability of the sponsor, the judge was required to consider whether the sponsor is vulnerable. At paragraph [38] the judge noted the sponsor's claim that he had had allowed his family to keep him apart from the appellant because he was very unwell and vulnerable, but the judge did not take the appellant's vulnerability into account when assessing his credibility and reaching findings.
8. Mr Nicholson submits there is now evidence in the form of a letter dated 30 January 2024 from the sponsor's GP, Dr Agarwal that the sponsor suffers from depression and is prescribed Mirtazapine, Zopiclone and Fluoxetine. That evidence was plainly, as Mr Nicholson accepts, not before the FtT. As far as the second ground of appeal is concerned, Mr Nicholson submits the appellant had provided explanations for the matters relied upon by the judge.
9. In reply, Ms Arif adopted the rule 24 response dated 24 June 2024 file by the respondent. She submits there are no errors of law in the decision of the judge and that the appellant's grounds and submissions amount to no more than disagreement with the findings and conclusions reached by the judge.

DECISION

10. The circumstances in which an adult will be treated as vulnerable are outlined in the Joint Presidential Guidance Note No. 2 of 2010: *Child, Vulnerable Adult and Sensitive Appellant guidance* ("the Joint Presidential Guidance") as well as in the Practice Direction for the First Tier and Upper

Tribunal on Child, Vulnerable Adult and Sensitive Witnesses (“the Practice Direction”). An individual may be vulnerable because of an innate characteristics (such as age), because of personal characteristics (such as mental health problems) or because of events over which they have or have had no control e.g. past detention or torture. The Joint Presidential Guidance confirms that the primary responsibility for identifying vulnerable individuals lies with the party calling them. The guidance applies to children and young persons under the age of 18, and, amongst others, to individuals who suffer from a mental disorder within the meaning of the Mental Health Act 1983 or who have any significant impairment of intelligence or social function such as to inhibit understanding and participation in proceedings.

11. The Practice Direction is primarily concerned with the circumstances in which a child, vulnerable adult or sensitive witness will be required to attend as a witness and give evidence at a hearing and how that evidence is given.
12. The sponsor was called to give evidence and a decision was plainly taken by the appellant’s representatives that there was no impediment to his participation in the hearing of the appeal. There was no suggestion that the sponsor required any special measures to be adopted during the course of the hearing and in particular, during cross-examination, so that the best evidence was available to the Tribunal.
13. Here, beyond the bare assertion made by Mr A Ali at the hearing of the appeal (assuming such an assertion had been made), that the sponsor has mental health issues, without any elaboration, and that the appellant should be treated as a vulnerable witness, as the appellant’s skeleton argument concedes, the medical evidence before the Tribunal was ‘sparse’. The discharge letter from the University Hospitals, Birmingham, dated 17 September 2023 that Mr Nicholson referred to simply confirms that one of the co-existing medical conditions that the sponsor has is a “Depressive episode, unspecified’. There was no evidence as to the ‘depressive episode’, when it occurred, when any diagnosis was made and the background to that episode or its impact upon the appellant’s cognitive functioning. There was no evidence before the FtT that the order and manner in which evidence given by the sponsor may be affected by some mental, psychological or emotional trauma or disability.
14. As far as the quality of his evidence was concerned there was no evidence before the FtT that the quality of evidence given by the sponsor is likely to be diminished by reason of vulnerability.
15. The failure to refer to the Joint Presidential Guidance or the Practice Direction was therefore immaterial. There was no evidence before the Tribunal that any vulnerability would impact on the sponsor’s ability to give evidence or impact on his evidence. There was no evidence regarding the relationship between any vulnerability and the evidence. It was therefore open to the Tribunal to make adverse credibility findings despite any vulnerability. There was simply no evidence before the Tribunal that the evidence of the sponsor should be treated with some

caution. The appellant and sponsor gave evidence before the Tribunal and in a careful decision the judge gives clear reasons for his conclusion that the appellant has failed to show, on balance, that she and the sponsor are in a genuine and subsisting relationship.

16. The judge had regard to the email from the sponsor (page 260 of the consolidated bundle) and the letter from the sponsor's representatives (page 262 of the consolidated bundle) that attest to the breakdown of the appellant's marriage and the appellant's separation from the sponsor. The sponsor had plainly withdrawn his support.
17. The judge considered the claim made by the appellant and sponsor that their relationship had never really broken down and the claim made by the sponsor that the signatures on his letter to the respondent dated 15 September 2021 (page 263 of the consolidated bundle) and on the Islamic Divorce Certificate of 14 September 2021 (page 264 of the consolidated bundle) were not his signatures. The judge rejected the sponsor's claim for reasons set out at paragraph [28] of the decision. It is not said by the appellant that the judge misunderstood the claims being made by the appellant and sponsor and the appellant's mental health and any vulnerability has no impact at all upon the judge's assessment of the claims made by the sponsor.
18. It was open to the judge to have regard to the fact that the appellant and sponsor had been unable to provide a clear account of where they had lived and with whom, since the appellant's arrival in the UK. The judge noted that a common theme throughout was that the appellant and sponsor make a number of elaborate allegations to explain their acknowledged separation without corroboration. The absence of corroborative evidence can, where as here, it would easily be available, be of some evidential value itself. As the judge noted, evidence that could reasonably have been obtained was not provided without good reason. That was a matter to which the judge was entitled to attach appropriate weight.
19. The evidence now relied upon by the appellant was not, as Mr Nicholson acknowledges, before the FtT.
20. As far as the second ground of appeal is concerned, the judge carefully considered the appellant's claim that the signatures on his letter of 15 September 2021 and on the Islamic Divorce Certificate were forged. The grounds of appeal claim the judge failed to acknowledge the sponsor's vulnerability and mental health issues, preventing him from reporting such incidents to avoid family discord. The difficulty for the appellant here is twofold. First, the judge carefully considered the claim made by the sponsor that the signatures had been forged, possibly by his sister, and gave perfectly good and adequate reasons for rejecting that claim. Second, the evidence before the Tribunal regarding sponsor's vulnerability and mental health does not even begin to suggest that the appellant was vulnerable from his own family and that he was concerned about any 'family discord'.

21. Similarly it was open to the judge, on the evidence before the Tribunal to reject the sponsor's claim that he was kept in Pakistan for the reasons set out at paragraphs [30] to [32] of the decision. In considering the claims made by the appellant and sponsor it was undoubtedly open to the judge to have regard to the absence of evidence from the 'British cousin' who assisted the sponsor, the sponsor's brother, the appellant's uncle or of on-going communication between the appellant and sponsor throughout their separation. The appellant was plainly aware that the respondent's case is that she is not in subsisting relationship with the sponsor. The absence of corroborative evidence that would easily be available, was plainly a matter that judge was entitled to have regard to.
22. The judge also noted that the evidence before the Tribunal that the appellant and sponsor are now living together was very 'thin' comprising of a council tax bill issued in December 2022. There was no other evidence of cohabitation since. The judge also noted neither the sponsor nor appellant had made any attempt to contact the respondent that they had reconciled. Although the appellant may not have know of the representations that had been received by the respondent, the sponsor did know that his representatives at the time had sent a letter to the respondent regarding the withdrawal of his support for the appellant's application for leave to remain. The judge noted it was not until the skeleton argument and witness statements were served in November 2022 that the appellant and sponsor set out their case.
23. I am mindful of the reminder, in *Lowe v SSHD* [2021] EWCA Civ 62 by McCombe LJ at paragraph [29], that appellate courts should exercise caution when interfering with evaluative decisions of first instance judges. Restraint must be exercised when considering an appeal against the decision of a specialist judge at first instance. In *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 the Court of Appeal reminded appellate courts:

"It is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in *AH (Sudan) v Secretary of State for the Home Department* at [30]:

"Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."
24. Standing back and reading the decision of the FtT as a whole, it clear that the judge has demonstrated that care has been taken and that the evidence as a whole has been properly considered. It was open to the judge to conclude that he does not accept the appellant and sponsor are in a subsisting relationship, despite continuing to be married under English law for the reasons he gave.
25. It follows that there is no material error of law in the decision of the FtT and I dismiss the appeal.

NOTICE OF DECISION

26. The appeal to the Upper Tribunal is dismissed
27. The decision of First-tier Tribunal Judge Mills promulgated on 18 January 2024 stands.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 November 2024