IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004174

First-tier Tribunal No: HU/00100/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 December 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

NABILA KAUSAR

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Brown, instructed by Primus Solicitors
For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 16 December 2024

DECISION AND REASONS

1. The appellant is a citizen of Pakistan whose date of birth is recorded as 1 January 1989. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for entry clearance to the UK as an adult dependant relative.

2. The appellant applied on 5 August 2023 for entry clearance to the UK as the adult dependent relative of her brother, Mohammad Shahbaz, the sponsor, a British citizen living in the UK.

3. The appellant's application was refused on 27 November 2023 on the grounds that she did not meet the eligibility requirements of Appendix ADR of the immigration rules as an adult dependent relative as she had not adequately demonstrated that she no

longer had other relatives in Pakistan to care for her or that she required long term personal care to perform everyday tasks, and that she had not demonstrated that she required specific care to perform everyday tasks which she could not receive in Pakistan. The respondent considered that the appellant did not therefore meet the requirements of ADR.5.1 or 5.2 of Appendix ADR. In addition the respondent considered that the appellant did not meet the eligibility financial requirements in paragraph ADR.6.1 and that there were no exceptional circumstances which would render refusal a breach of Article 8 for the purposes of ADR.7.1.

4. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Horton on 10 May 2024. At the hearing it was accepted by the respondent that the appellant had demonstrated that she required long term personal care to perform everyday tasks as a result of age, illness or disability, and therefore met the requirements in ADR.5.1. That was on the basis of a medical letter confirming that she was childlike and had issues with learning problems and numerous psychiatric conditions including bipolar disorder, PTSD and depression and could not take care of herself or live alone. With regard to ADR.5.2, the judge noted that the appellant had previously been cared for by her parents, but they had since died, and she was currently being looked after by her sister-in-law who was the wife of her brother who lived in Spain, and who wished to return to Spain. Aside from the sponsor, she had a sister in the UK and two brothers and a sister in Spain. The sponsor used to visit the appellant in Pakistan but had not been back since 2022 as he feared persecution there. The judge considered, but accorded limited weight to, a report from a lawyer in Pakistan, Mr Asid Ali Khan, and other evidence, which was relied upon by the appellant, and which concluded that she would not be able to obtain appropriate long-term care and treatment in Pakistan. The judge did not accept that there was no care available to the appellant in Pakistan and considered that the appellant's siblings could take turns in caring for her or alternatively pay for care at home or elsewhere in Pakistan. As for ADR.6.1, the judge found the evidence in regard to the sponsor's financial circumstances to be inadequate and concluded that the appellant had failed to demonstrate that the requirements were met. The judge found, with regard to Article 8 outside the immigration rules, that there was no family life between the appellant and sponsor, but that in any event the respondent's decision was not disproportionate. The appeal was accordingly dismissed, in a decision promulgated on 23 May 2024.

5. The appellant sought permission to appeal against Judge Horton's decision. Permission was refused in the First-tier Tribunal but was subsequently granted in the Upper Tribunal on a renewed application on reformulated grounds. The first ground was that the judge had conflated the legal tests under the immigration rules and the Secretary of State's policy, and had therefore misapplied the test under the rules and had failed properly to analyse whether care could reasonably be provided. Secondly, that the judge had misunderstood the scope of Article 8 and had erred by finding that Article 8 was not engaged. Thirdly, that the judge had unfairly attributed observations to the expert which he had not made and had failed to have proper regard to what he did say. Fourthly, that the judge had failed to provide adequate reasons for his findings regarding ADR 5.1-5.3 including erroneously disregarding evidence of income. Fifthly, that the judge had failed to have due regard to the SSHD's policy and the subjective evidence before the Tribunal.

6. The respondent did not produce a rule 24 response.

Hearing and Submissions

7. The matter came before me for a hearing. Both parties made submissions.

8. Mr Brown submitted that the judge had failed to consider the emotional aspects of the case. The appellant was being cared for on a temporary basis by her sister-in-law Ishrat Mehdi who had been nominated by the family to provide care in the absence of any family living permanently in Pakistan who could do so. Ishrat Mehdi was from Pakistan but her home was in Spain. The appellant needed to be looked after by someone with whom she was familiar and that was why Ishrat Mehdi had been nominated by the family. Without Ishrat there would be no one to provide the level of care the appellant needed. Mr Brown said that Ishrat Mehdi was currently in Spain and so the joint sponsor had travelled to Pakistan to be with the appellant whilst she was there. In accordance with the guidance in BRITCITS v The Secretary of State for the Home Department [2017] EWCA Civ 368 , the focus of the judge's consideration should have been on what the appellant required in terms of emotional and psychological support. The evidence was that the appellant required a specific person to look after her. The judge had given inadequate reasons for rejecting the evidence of the expert which addressed that matter. The decision needed to be set aside and re-made.

9. Mr Tan made his submissions with reference to the specific grounds pleaded. With regard to the first ground and the assertion that the judge had conflated the legal tests under the immigration rules and the Secretary of State's policy, he submitted that the judge had not misapplied the rules but had followed the decision in Britcits which drew from both the guidance and the rules. The judge had correctly relied on the appellant's situation and what was available to her before moving on to consider what was reasonable in the circumstances. The judge found that the burden of proof had not been discharged as to the care which was available in Pakistan, noting the limitations of the evidence produced. He was entitled to find as he did. As for the second ground, the judge took account of relevant considerations when assessing whether family life was established and went on, in the alternative to consider proportionality, conducting a global assessment of the evidence. With regard to the third ground, the judge gave proper reasons for according little weight to the expert report. As for the fourth ground, the judge had regard to the CPIN and the evidence about facilities available in Pakistan and was entitled to find that the appellant could access such facilities. With regard to the question of maintenance and accommodation, the judge was entitled to find that the evidence was so haphazard that he could not make a finding in the appellant's favour, and that the specified evidence had not been produced. As for the sixth ground which asserted that the judge failed to have regard to the SSHD's policy, the judge had properly considered all resources available to the appellant by way of the provision of care.

10. In response, Mr Brown reiterated his submission that the judge had failed to focus on the required level of care which the appellant needed, including the emotional and social requirements of such care. The provision of care homes and other such care would not necessarily meet the required level of care. The judge had also erred in his approach to the evidence of maintenance and accommodation available to the appellant.

Analysis

11. It is the appellant's case that the judge failed to apply, or misapplied, the relevant legal test under the immigration rules and instead conflated the tests under the guidance and the rules, focussing on the policy requirements rather than considering the appellant's care needs and whether those could reasonably be satisfied by what was available in Pakistan. At the hearing Mr Brown refined the challenge and

submitted that the judge had failed to consider the emotional and psychological needs of the appellant. I do not accept that that is the case.

12.It is clear that the judge set out the policy position at [20] simply by way of background to the purpose and requirements of the rules. That was by no means the focus of his assessment and neither was there any conflation of the policy and the rules. On the contrary, the judge went on to consider the relevant rules and the requirements therein in detail, having regard to relevant caselaw and the guiding principles, including the guidance in Ribeli v Entry Clearance Officer, Pretoria [2018] EWCA Civ 611 and BRITCITS v The Secretary of State for the Home Department [2017] EWCA Civ 368. He clearly identified the need to demonstrate that the care available in Pakistan was reasonable, not only as a matter of availability, but also in terms of what the appellant subjectively required. However, as Mr Tan properly pointed out, the judge had first to assess what care was available before he could go on to consider whether that was reasonable or not and, as the judge observed, the evidence of what was available, and of attempts by the appellant and the sponsor to establish what was available, was severely lacking.

13.The evidence upon which the appellant relied in that respect consisted of a report from a local lawyer, Mr Khan, a few emails to some care homes in Pakistan and otherwise generalised assertions. The judge also had before him a CPIN report which consisted of country background evidence in relation to healthcare available in Pakistan. The judge considered both the general country evidence and the specific evidence which was relied upon. He addressed those in detail from [28] to [36]. He noted the evidence of healthcare systems generally available in Pakistan and, with regard to the specific evidence, he gave cogent reasons, at [28] to [32], for not being able to accord particular weight to Mr Khan's report, and at [35] for concluding that both Mr Khan and the sponsor were simply making blanket assertions which were not supported by evidence. In the circumstances, having given full and detailed consideration to the evidence as a whole, the judge was perfectly entitled to conclude that there was insufficient evidence to justify a conclusion that there was no suitable care available to the appellant in Pakistan.

14.In any event, in so far as Mr Brown submitted that there was a failure by the judge to consider the reasonableness of the provision of care in Pakistan in terms of the emotional and psychological requirements of the appellant, it seems to me that there was again, an absence of relevant evidence before the judge. As the judge properly observed, the only reason given for the necessity for the provision of care to come from within the appellant's family was limited to preferences and cultural traditions. There was otherwise no evidence before him to demonstrate that the appellant would be adversely affected by care being provided from other sources such as an appropriate carer at home, as supplemented by the continuation of the current arrangements whereby family members took it in turns to travel to Pakistan. It was Mr Brown's submission that the appellant needed to be cared for by someone with whom she was familiar, but there was nothing to suggest that a carer from outside the family but within her own home and familiar surroundings or elsewhere in her own country would be any less able to fulfil such a role than being brought to the UK to be looked after by family members whom she had previously seen only infrequently. That was essentially what the judge concluded in his findings at [35] to [38] and [54] and such a conclusion was indeed entirely open to him on the evidence available to him.

15.In the circumstances I do not find there to be any merit in the first ground. The judge was only able to make a decision on the evidence before him. As he properly found, the evidence consisted of little more than unsupported assertions and did not

demonstrate that there was a lack of available, suitable care for the appellant in Pakistan. Contrary to the assertion made in the grounds, the judge clearly had the relevant test and guiding principles in mind when reaching his conclusion.

16.Mr Brown did not make separate or substantive submissions on the second and third grounds, but rather relied on the points raised in relation to the first ground. In any event I do not consider there to be any merit in the second and third grounds. The judge was perfectly entitled to conclude that family life had not been established between the appellant and the sponsor for the purposes of Article 8 and he gave cogent reasons for that conclusion at [46] to [50]. He did not make his finding solely on the basis of frequency of contact, as the grounds assert, but rather properly considered that as a relevant factor, amongst others, in determining the extent of the relationship and the emotional and financial dependency between the appellant and the sponsor, in line with relevant caselaw. In any event, the judge went on to consider proportionality in the alternative, at [52] to [56], and gave cogent reasons for concluding that the respondent's decision was a proportionate one. As Mr Tan submitted, there was no specific or separate challenge to that assessment and accordingly the judge's Article 8 findings stand. As for the third ground, I have already discussed the report of Mr Khan above. The grounds assert that the judge, at [32], attributed observations to the expert that he did not make, but that is clearly not the case, as can be seen from the extracts specifically taken from Mr Khan's report, at [29] of the judge's decision. The judge gave perfectly proper reasons for according the report the limited weight that he did.

17.As for the judge's findings on the financial requirements of the rules, Mr Brown initially made no submissions on the matter, but he then responded to Mr Tan's submissions and asserted that the judge had failed to say what he made of the evidence before him and why he did not accept that it was reliable and adequate. He referred in particular to the evidence provided in relation to the income from employment of the sponsor and his wife as well as the properties which they owned and which were available to the appellant. However, as Mr Tan submitted, the judge had considered that evidence in the context of the relevant rules, at [42] and [43], and he gave cogent reasons as to why the evidence was not sufficient. Not only was there a failure to produce the specified evidence as set out in the rules, as Mr Tan submitted, but the evidence that was produced was haphazard and lacking in proper detail, and it failed to take account of the situation of the reduction in earnings and income which was likely to occur if the sponsor and his wife were engaged in caring for the appellant. In the circumstances I agree with Mr Tan that the judge was perfectly entitled to find that the burden of proof had not been met by the appellant in that regard.

18.For all these reasons, it cannot be said that the judge was not entitled to conclude as he did on the evidence available to him or that he made any material errors of law in reaching his decision. He self-directed himself appropriately on the relevant immigration rules and their application; he had full regard to, and properly applied, the relevant guidance; and he assessed the evidence in the context of the relevant tests and legal principles, focussing on the relevant issues. For all these reasons I find no error of law in the judge's decision and I uphold the decision.

Notice of Decision

19.The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 19 December 2024