



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-004234

First-tier Tribunal No:
HU/63664/2023
& LH/04065/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
15th January 2025

Before

UPPER TRIBUNAL JUDGE KHAN
DEPUTY UPPER TRIBUNAL JUDGE BARTLETT

Between

MRS RUKHMAT JAN
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr William Khan, Legal Consultant instructed by Fountain Solicitors

For the Respondent: Ms Lecointe, Senior Presenting Officer, Home Office

Heard at Field House on 20 December 2024

DECISION AND REASONS

1. On 31 August 2022 the appellant made an application for leave to remain in the United Kingdom on the basis of her family and private life. The Home Office refused her application on 14 August 2023 and the appellant appealed to the First-tier Tribunal. The appellant's appeal came before Judge of the First-tier Tribunal Row ("the judge") who dismissed the appellant's appeal in its entirety in a decision dated 4 July 2024.

2. The appellant is a Pakistani citizen who claims that there were very significant obstacles to re-integration into Pakistan largely as a result of health issues and that the respondent's decision was disproportionate under article 8 European Convention on Human Rights (ECHR).
3. The judge rejected the appellant's claim in its entirety.
4. Permission to appeal was granted by First-tier Tribunal Judge Scott on 11 September 2024 on all grounds.
5. The appellant's grounds of appeal are lengthy but can be grouped within the following categories:
 - a. Irrational findings in respect of the expert report of Dr Pascale Schild and the report of Dr S A Mirza;
 - b. Making a material mistake in respect of the appellant's GP records;
 - c. Making perverse or irrational findings in respect of the appellant's private life;
 - d. Making perverse or irrational findings in respect of Article 8 ECHR;
 - e. Inappropriate comments were made by the judge.
6. The appellant's skeleton argument expanded on these grounds and Mr Khan made submissions in line with the grounds of appeal and the skeleton which I will address below.
7. Ms Lecointe's submissions were that the grounds of appeal and submissions are merely a disagreement with the findings of the judge. In particular, she submitted the following:
 - a. The findings in relation to Dr Schild's report were open to the judge and were reasonable;
 - b. Dr Mirza report is a letter on blank paper with no contact details of the surgery or clinic. There was no reason to accept or assume that the appellant had been examined because the word consultation was used. The letter does not comply with any requirements of an expert report. It was unclear from the letter how long the consultation lasted and where the information relied on in it was from. The judge was entitled to make the comments he did about it and not rely on it;
 - c. It was accepted that the judge used borderline contentious language but the comments were not material. The comments do not show that the judge did not take a proportionate approach to the evidence-;
 - d. the judge was bound to consider section 117 of the 2002 Nationality, Immigration and Asylum Act and any language used by

the judge should not affect the underlying decision which was sound.

Dr Pascale Schild's expert report

8. Mr Khan's submissions were that the judge's findings at para [28] to [34] of the decision were fundamentally flawed as there were no findings on important issues central to the appeal which were that that Dr Schild made it clear there were no care facilities and it is unlikely that the appellant would be able to access health facilities in Pakistan without help.
9. At paragraph [60] the judge sets out his finding that the appellant would not require full-time care in a care home. This finding is based on his conclusions on the medical evidence which I have dealt with below and, for the reasons I have set out, were open to him and adequate. The submission that the judge had to decide on the care facilities as a core aspect of the claim is without merit.
10. At paragraph [61] the judge sets out his findings that the appellant would be able to employ someone to provide additional assistance with domestic tasks, that family would be able to meet the cost and that she is not at a stage where she requires care with her daily needs. I have set out below that the judge's findings in relation to the medical evidence and on her care needs were open to him and adequate. Given that the judge concluded that the appellant did not need help with daily care needs, the criticisms of how he dealt with Dr Schild's report are not material.
11. The grounds of appeal cite part of a paragraph in Dr Schild's report which set out the lack of care homes and domestic care services but did not refer to the part of the report which recognised that families pay for carers *"more affluent families employ domestic staff and carers to help them look after their ageing parents at home. However, such a private arrangement requires that reliable relatives are there who are both capable and willing to organise a monitor home carer and regularly take the relative in need of care to the hospital/medical health centre."* I conclude that the judge's findings that the appellant's family would be able to employ help if required were open to him on the evidence available to him.
12. We conclude that there is no error of law in relation to Dr Schild's report.

Dr Mirza's report

13. Mr Khan submissions referred to the expert report of Dr Mirza. The evidence from Dr Mirza is a two-page letter the first page of which sets out information such as date of birth, NHS number, past medical history and medication. The second page contains more text. We consider that it is not correct to refer to Dr Mirza's evidence as an expert report as it does not on the face of it comply with any of the requirements of an expert report. Mr Khan stated that he had been taken by surprise by Ms Lecointe's

submission in this regard however it is obvious on the face of it that it does not comply with the requirements of expert reports and it could not be argued otherwise. The Judge referred to it as a report which is reasonable.

14. The grounds of appeal, skeleton argument and Mr Khan's submissions were that the judge gave no reasons for preferring the GP records to Dr Mirza's letter. We referred Mr Khan to paragraph 49 of the Determination and asked him if he maintained that the judge had given no reasons for preferring the GP records. Mr Khan accepted that reasons had been given but submitted that they were inadequate.
15. We have reviewed the reasons given and consider that they are clear and adequate. The judge made findings that were open to him on the evidence before him. There is no error of law.
16. Mr Khan also made submissions that the judge made an error in setting out that Dr Mirza did not report having carried out a physical or mental state assessment of the appellant. At paragraph [38] the judge sets out that "*Dr Mirza does not report having carried out a physical or mental state assessment himself. This is surprising bearing in mind he had seen the appellant and was preparing a report. He recalled having been shown some medical records by one of the appellant's sons. He does not say what those records were.*"
17. We find that it is clear from paragraph 38 that the judge accepted that Dr Mirza had seen the appellant. We find that it was open to him to conclude that Dr Mirza does not report having carried out a physical or mental state assessment himself because Dr Mirza's letter does not state that he carried out an assessment nor does it provide any details of an assessment he carried out. This was Ms Lecointe's submission and Mr Khan submitted that because the appellant had a consultation with Dr Mirza it necessarily followed that Dr Mirza carried out an assessment of the appellant. We reject Mr Khan's submissions in this respect, it does not necessarily follow that because a consultation has taken place an assessment has taken place. Dr Mirza's report does not set out that an assessment has taken place and it was therefore open to the judge to make that finding.
18. The grounds of appeal submitted that paragraph [38] which stated "*he recalled having been shown some medical records by one of the appellant's sons. He does not say what those records were.*" is an error of law. Dr Mirza's letter sets out "*I am writing this based on a private medical consultation and GP records obtained from the sun on 1.3.24.*" There are no further details about the GP records such as the length of pages or the dates they covered. Even taking Mr Khan's submissions at the highest which are that the judge made an error, this is not a material error of law because as we have set out elsewhere the judge gave adequate reasons and made findings that were open to him about preferring the GP records.

GP Records

19. Mr Khan submitted that the judge made an error in paragraph [42] when he stated that *“the MRI scan results are not in the records.”* At best this is a misreading by Mr Khan of paragraph [42] which states *“the appellant had been referred for an MRA scan to eliminate the possibility of an aneurysm. The result of the MRA investigation is not in the records.”* Paragraph [42] unarguably refers to the MRA scan not the MRI scan.
20. At paragraph [41] the judge deals with the MRI scan and sets out *“an MRI scan was carried out on 12 May 20 to 23 [sic], page 90. There is a letter from a consultant neurosurgeon at page 68. It reports that the MRI had not revealed any significant matters of concern.”*
21. From the above, we find that it is clear that the judge accepted that an MRI scan had been carried out and accurately recorded what the medical records said about the results.
22. Mr Khan submissions were that the judge was in error in paragraph 52 when he stated *“It is said that the appellant is suffering from dementia. There is nothing in the medical records to indicate that this is the case. Neurological investigations revealed nothing amiss other than age-related changes. The appellant and her sons had not taken up a reference to the memory clinic. This would perhaps indicate that they did not regard it as being too serious a matter.”*
23. Mr Khan submitted that it was an error to conclude that the appellant did not suffer from dementia. We asked Mr Khan where it was said in the medical records that the appellant suffered from dementia. He referred to the outcome of the MRI scan on 29 January 2023. We asked if he was submitting that that diagnosed dementia and he said no, the fact that it stated *“MRA for further evaluation as requested by neurosurgery”* and meant that there was a possibility of dementia that needed to be investigated.
24. We find that the records of the MRI scan are largely a comment about the aneurysm and Mr Khan accepted that there was no statement about dementia or a diagnosis of dementia in that or any other part of the records. His submission was that it is recorded in various parts that the appellant was suffering from memory loss and that it could be attributable to a number of factors and dementia could not be ruled out. Therefore, the judge made an error of law in that respect.
25. We reject Mr Khan submissions. He failed to identify any part of any of the evidence which identified that the appellant had dementia. He accepted that there was no diagnosis of dementia. We find that the judge’s conclusions at paragraph 52 were open to him on the evidence. There is no error of law.
26. Mr Khan submitted that the statement in paragraph 52 that *“the appellant and her sons had not taken up a reference to the memory clinic.”*

This would perhaps indicate that they did not regard it as being too serious a matter.” was erroneous and inappropriate. It was submitted that it was erroneous because the reason the appellant had not taken up the appointment was because she was unwell and this was set out in a letter from the memory assessment service dated 7 July 2023 which set out “*an appointment was initially agreed for Wednesday 21st June, however we received communication on 20th June to advise that unfortunately Mrs Rukhmat was unwell and could not make the appointment. I liaised with her son, Mr Hussein, and advised I do have some availability early July and he advised that he would discuss with his mother and call me back. I have made further attempts to negotiate an appointment but have not heard back from Mrs Rukhmat or her family.*” The letter then goes on to say that the appellant was discharged from the memory assessment service.

27. Mr Khan submissions did not refer to the full paragraph in the memory assessment letter which we have set out. They relied entirely on the appellant being unwell to attend the first appointment and no mention was made of the rest of the paragraph which sets out that the service made attempts to contact the appellant’s son to make an appointment but were unable to do so. Mr Khan has failed to refer to any evidence which set out why the services further attempts to arrange an appointment were unsuccessful. Therefore, we conclude that the judge did not make an error of law and he made findings that were open to him: on the evidence before him there was no evidence as to why the appellant and her family had failed to engage with the service to arrange an appointment.
28. The grounds of appeal made criticisms of paragraph 51 stating that “*the only current conditions relate to pain in her shoulder and knees.*” Mr Khan however did not identify why this was an error by the judge. The GP records record that there were three active problems which are the shoulder pain, osteoarthritis of the knee and the cerebral arterial aneurysm. The first two are dated 5 March 24 and the final one is dated 3 October 2022. Mr Khan did not identify that there was any evidence which set out how or if the aneurysm had an effect on the appellant. Given this and the date of the record of the aneurysm, we reject the submission that this is an error of law and even taken at its highest it could not be a material error of law.
29. Mr Khan has not been able to identify a basis on which it can be established that the judge’s conclusions in relation to the appellant’s medical situation and her care needs were not open to him. The judge explained with adequate reasons which were open to him why he preferred the GP records. The judge set out his conclusions on the appellant’s health and the care that she required. Mr Khan has not been able to establish that these conclusions were based on any misreading or misinterpretation of the GP records. We find that the judge made findings which were open to him.

Findings in respect of the appellant’s private life and under article 8 ECHR

30. It was agreed that these grounds are interrelated.
31. In relation to the findings on private life, a substantial part of the grounds of appeal relate to matters that we have already dealt with above such as the submission that there was no medical evidence of dementia and a finding that the appellant did not require full-time care in a care establishment.
32. We have set out above that it was open to the judge to find that if the appellant required additional assistance this could be paid for by her sons and obtained through carers and at paragraph 61 it was open to the judge to find that *“the medical records would indicate that she is not at the stage where she requires care with her daily needs.”*
33. The submissions stated that the use of the word alien at paragraph [70] of the judgement was pejorative. Paragraph [70] uses the word alien in this sentence *“Subject to complying with its legal obligations the United Kingdom is under no obligation to allow an alien unlawfully within its territories to remain there while such an application is considered.”* Mr Khan used the word alien in his submissions in relation to a different ground of appeal. Alien is a term used in the immigration canon. We do not consider that the use of the word alien in paragraph [70] can be reasonably construed as pejorative and this submission is rejected.
34. The grounds of appeal asserted that it was an error of law of the judge to fail to take into account the impracticability of the appellant’s family accompanying her to Pakistan to continue family life there. We find that this is nothing more than a mere disagreement with the judge’s findings.
35. Therefore, we reject the submissions that there is an error of law in relation to the appellant’s private life or article 8 ECHR.

Inappropriate comments

36. We were not referred to any case law by the parties, however we have given consideration to Alubankudi (Appearance of bias) [2015] UKUT 542 (IAC). In that case the First-tier Tribunal judge stated *“there is a great deal of authority to the effect that United Kingdom is not a retirement home for the rest of the world.”* These comments were described by the Upper Tribunal as *“unfortunate”* but were insufficient to indicate bias by the judge. The Upper Tribunal stated *“the interface between the judiciary and society is of greater importance nowadays than it has ever been. Judges must have their antennae tuned to the immediate and wider audiences, alert to the sensitivities and perceptions of others, particularly in a multicultural society. Statements such as that made by the First-tier Tribunal judge in this case that “the United Kingdom is not a retirement home for the rest of the world” had the potential to cause offence and should be avoided.”*

37. In Sivapatham (Appearance of Bias) [2017] UKUT 00293 (IAC) McCloskey J, the then President of the Upper Tribunal set out some guidance on the correct approach in these sorts of cases:

“(i) Indications of a closed judicial mind, a pre-determined outcome, engage the appearance of bias principle and are likely to render a hearing unfair.

“(ii) Provisional or preliminary judicial views are permissible, provided that an open mind is maintained...”

38. I have already addressed the submission which related to paragraph [70].

39. Mr Khan’s submissions also referred to paragraph [79] and stated the grounds of appeal went far beyond what was appropriate. Paragraph [79] sets out *“The maintenance of effective immigration controls is in the public interest. It is not in the public interest for people to come here as a visitor and then refuse to leave. It would cause chaos if tolerated. It causes economic and social damage. It damages public confidence in the ability of His Majesty’s government to manage its immigration policies. It is contrary to good order and governance. This weighs heavily against the appellant in assessing proportionality.”*

40. We consider that paragraph [79] is a statement of the public interest in immigration control and it does not go beyond a reasonable explanation of that.

41. In a different section of the grounds of appeal there is reference to the judge’s comments relating to the appellant using a wheelchair. The relevant parts of the determination are paragraphs [54] and [55] which set out the following:

“54. The appellant presented at the hearing in an unusual manner. She was pushed into the hearing room in a wheelchair. Mr Khan, who appeared for her, said that she had not been able to give him instructions. It was for that reason that she did not give evidence. She did interject on several occasions as a result of questions asked and answers given. She was asked not to do so.

55. The use of the wheelchair was not mentioned in the medical records. I asked the appellant’s son, Nissa Hussain, about this. He said that it had not been prescribed or recommended by medical professionals. He had bought it himself. He said that the appellant was independently mobile but could not walk long distances. That is why he had bought it. It does not explain why was necessary for her to be wheeled into the hearing room over the short distance from the reception area.”

42. We find that this is a reasonable factual record of what took place at the hearing. The use of “unusual manner” is not unreasonable and cannot reasonably be construed as giving rise to offence or an appearance of bias.
43. Mr Khan’s submissions referred to paragraph [73] which stated the following *“The appellant has been a considerable financial burden to the United Kingdom since she came here. The medical records indicate that the NHS has been treating her without payment with an enthusiasm, alacrity and thoroughness which perhaps goes some way to explain why the NHS is finding it difficult to provide services to those who are entitled to it. This is at a time when United Kingdom has to borrow large sums of money each month to meet its responsibilities.”*
44. We find that the judge’s comments in paragraph [73] are unfortunate. They have strayed into commentary on matters outside the appeal in issue. We accept that these give rise to the appearance that the appellant has not had her appeal decided with the fairness and objectivity with which she deserves. We find that this is a material error of law that taints and infects the entire decision.
45. For the reasons stated, we allow the appeal given the inappropriate comments made by the judge. We set aside the decision of First-tier Tribunal Judge Row. Given the nature of the material error of law, we are satisfied that this case should be remitted to the First-tier Tribunal to be heard afresh with no preserved findings.

Notice of Decision

46. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside. The case is remitted to the First-tier Tribunal to be reheard afresh by a different judge with no preserved findings.

J Bartlett

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 January 2025