Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/31626/2015**
IA/31268/2015

THE IMMIGRATION ACTS

Heard at: Manchester	**Decision & Reasons Promulgated**
On: 11 May 2017	**On: 16 May 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SAEED RAJPUT
ABIDA SAEED

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Mr Read (Counsel)
For the Respondent: Mr McVeety (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. The appellants are both citizens of Pakistan. The first appellant is the husband of the second appellant. The appellants are the parents of two British citizen daughters working in the United Kingdom ('UK') as doctors. The couple also have two sons said to be residing in the UK and Dubai respectively.

2. The appellants have appealed against a decision of the First-tier Tribunal dated 28 September 2016 in which it dismissed their appeals under the Immigration Rules and on human rights grounds.

3. In a decision dated 20 February 2017 Upper Tribunal Judge Lindsley granted the appellants permission to appeal against the First-tier Tribunal decision on the basis that it is arguable that: (i) there was a failure to determine the family life relationship between the appellants and their daughters under Article 8 of the ECHR, and; (ii) the assessment of medical evidence relating to the first appellant's ability to fly is irrational.

Error of law

Agreed approach

4. At the beginning of the hearing I indicated a provisional view to the representatives: as observed in the decision granting permission, the First-tier Tribunal failed to make any findings on family life and this aspect of the appeal needs to be remade but there has been no appeal against the factual findings (save for the letter from the first appellant's GP, Dr Morais), and these findings should form the basis of the family life Article 8 assessment together with any updated evidence and submissions. Both representatives agreed with this approach.

GP letter

5. As far as the error of law stage of the hearing was concerned, I heard brief submissions from Mr Read to the effect that the findings at [15(i)] were not open to the First-tier Tribunal. I did not need to hear from Mr McVeety.

6. In my judgment, the First-tier Tribunal was entitled to attach little weight to the evidence of the first appellant's GP, Dr Morais, contained in a letter dated 16 June 2016, that the first appellant is not fit to fly "*due to his deteriorating physical and mental health*". In my judgment, the reasons provided for this at [15(i)] are not irrational. The First-tier Tribunal was entitled to regard the evidence as being relevant to the first appellant's circumstances in June 2016, as opposed to the date of hearing some three months later. The assessment of fitness to fly for illness worsened by stress is not a fixed concept, but likely to be fluctuating and the First-tier Tribunal was entitled to note that the GP letter did not address the circumstances nearer in time to the date of hearing. The First-tier Tribunal was also entitled to note that the GP did not consider whether there are ways in which the adverse impact of flying could be reduced, such as one of the daughters accompanying the appellants on the journey. Importantly, the First-tier Tribunal drew attention to the absence of support for the GP's assessment regarding fitness to fly, from any of the specialist consultants treating the first appellant. It was argued on the appellant's behalf that the GP was better placed to assess fitness to fly. I entirely accept that a GP is in principle able to assess fitness to fly, however in this particular case it was not irrational to take into account a complete absence of any indication of concerns with flying from the appellant's treating cardiologist, Dr Jenkins, when he had offered his opinion on the first appellant's health in a letter dated 29 February 2016. Dr Jenkins was

aware that the first appellant was going through an appeals process but did not address the appellant's ability to fly in the event his appeal was unsuccessful.

7. I therefore ruled that the First-tier Tribunal's findings of fact, including the assessment of the GP letter, were not infected by any error of law. It followed that my assessment of family life for the purposes of Article 8(1) and proportionality for the purposes of Article 8(2), should be made in light of those factual findings. Both representatives agreed with this approach.

Remaking the decision

Hearing

8. Mr Read asked for more time to prepare for the 'substantive' hearing. I therefore stood the matter down until 11.45, when Mr Read indicated he was ready to proceed. At the beginning of the 'substantive' hearing, Mr Read invited me to take into account three items of documentary evidence not available to the First-tier Tribunal: (i) correspondence demonstrating the initial hearing listed to be heard in June 2016 was adjourned at the appellants' request, and relisted for September 2016, when it was heard; (ii) a letter dated 28 August 2015 from Dr Jenkins, which describes the first appellant's history of coronary artery bypass graft surgery and stroke. He concluded that it is difficult to predict his long-term prognosis and that whilst the current medication regime reduces the risk of a further stroke substantially, he is still at risk; (iii) a letter dated 3 September 2015 from Dr Morais, to which I return later. Mr Read confirmed that he did not wish to rely upon any updated evidence (documentary or oral), post-dating the First-tier Tribunal hearing.

9. Mr McVeety invited me to find that although the appellants live with one of their daughters at present, there is no family life for the purposes of Article 8(1). In any event, he submitted the appellants' immigration history is such that there is a strong public interest in removal and this greatly outweighs the family life in question.

10. In his submissions Mr Read pointed out that both daughters are now British citizens. He invited me to find that there is family life between the daughters and their parents, in light of the nature and extent of the links and contacts, the ages and health of the appellants, and the living arrangements.

11. Mr Read invited me to revisit the findings relating to the assessment of whether the first appellant is fit to fly, in light of all the evidence available. He however accepted there was no updated medical evidence beyond that available to the First-tier Tribunal and the additional three documents referred to above (which all pre-date the First-tier Tribunal hearing).

12. Mr Read confirmed that he placed no reliance upon Article 3 and only relied upon Article 8 in so far as it concerns respect for the appellants' family life. He

clarified that the relevance of the medical evidence generally, and the proposition that the first appellant is unable to fly specifically, is solely in relation to explaining the nature and depth of the dependence of the first appellant upon his daughters.

13. At the end of submissions, I reserved my decision, which I now give with reasons.

Approach to Article 8

14. This is a case that potentially involves the family and private life of two people, who are not foreign national offenders, but in relation to whom it is now accepted cannot meet the requirements of the Immigration Rules. As such the test to be applied is that of compelling circumstances – see Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test) [2017] UKUT 13 (IAC) at [44]. In so doing I must apply the five stage Razgar v SSHD [2004] 2 AC 368 questions. Of particular importance in this case are the following: identifying the relevant family and private life to be respected, determining the weight to be attached to these in accordance with Article 8 jurisprudence and Part 5A of Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'); taking into account the public interest considerations; conducting the relevant balancing exercise.

Family and private life

15. It is now uncontroversial that in Article 8 jurisprudence, the meaning of 'family life' can extend in certain circumstances to include, inter alia, relationships between adults: see AA v UK [2012] INLR 1, R (Gurung) v SSHD [2013] 1 WLR 2546 and Singh v SSHD [2015] EWCA Civ 630 in which Sir Stanley Burnton said this at [24]:

> "I do not think that the judgments to which I have referred lead to any difficulty in determining the correct approach to Article 8 in cases involving adult children. In the case of adults, in the context of immigration control, there is no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8. I point out that the approach of the European Commission for Human Rights cited approvingly in *Kugathas* did not include any requirement of exceptionality. It all depends on the facts. The love and affection between an adult and his parents or siblings will not of itself justify a finding of a family life. There has to be something more. A young adult living with his parents or siblings will normally have a family life to be respected under Article 8. A child enjoying a family life with his parents does not suddenly cease to have a family life at midnight as he turns 18 years of age. On the other hand, a young adult living independently of his parents may well not have a family life for the purposes of Article 8."

16. In the recent Court of Appeal decision of Raiv v SSHD [2017] EWCA Civ 330 the above principles were noted to be uncontroversial.

17. It is not disputed that the appellants do not have family life for the purposes of Article 8 with their UK-based son. He has lived independently of his parents for a long time and does not provide any particular emotional or financial support over and above the normal bonds of love and affection. I now turn my attention to their relationship with their daughters, the sole focus of Mr Read's submissions.

18. Fareeha, is a British citizen, about 43 years old (her statement provides an age but not a date of birth). She is a full-time GP. She currently lives with her parents in Manchester and has done so since April 2016. Prior to this she lived and worked in Doncaster. In her statement she explains that she moved to Manchester in order to be close to her parents and to "*provide support to them to run their daily life like shopping etc., attending hospitals and GP appointments*".

19. Her sister, Aqsa, is about 39. She is also a British citizen and full-time GP. She lives independently of her parents with her husband, having moved away from her parents' home in December 2015 [10], but visits them on a daily basis. In her statement she claims that she does this to ensure timely medication and monitor her father's well-being and condition on a regular basis. She also assists in running their daily life such as cooking, cleaning, attending hospitals and GP appointments. Aqsa has also explained that she is in a "*married off and on have problematic family situation*". Her parents support her through these difficulties.

20. I now turn to the first appellant's health concerns. I do not propose to address every item of evidence. I have taken all the evidence into account and focus upon the evidence relied upon by Mr Read. It has been claimed that the appellants' ages (they are in their late 60s) and the first appellant's health make them particularly dependent upon their daughters. When this is viewed together with the family's circumstances in the UK, it is argued that there is a particularly close family relationship between the appellants and their adult daughters. I accept that the daughters are close to their parents, and there is love and affection between them. I accept that the appellants rely upon their daughters for financial support and that the daughters assist them with some day to day activities. I do not accept, on the evidence available to me, that the first appellant is dependent upon his daughters to care for him medically or in any other manner, on a day to day basis. As the First-tier Tribunal observed at [16(k)] he is a "*highly articulate, capable and bright man…capable of looking after his medicine and the occasional visit to a doctor*." Both daughters work full-time and the appellants look after themselves during this time. In any event, the evidence available to me does not address the medical condition of the first appellant as at the date of hearing, and dates to June 2016 and beforehand.

21. The letters from Dr Jenkins demonstrates that the appellant has had coronary surgery in 2009 and suffered from a small stroke in 2015. He is on long term medical therapy for these matters. These letters do not indicate that it is necessary for the first appellant to be accompanied to medical appointments or

for his condition to be checked on a daily basis. Indeed the letter dated February 2016 was a review, and a further review was offered in six months. This is not indicative of extensive, regular medical appointments.

22. I accept that the first appellant has health concerns as summarised by Dr Morais, and this includes a combination of concerns including coronary issues, the risk of another stroke, stress and diabetes. I do not accept that these cannot be treated in Pakistan. The exact same medication may not be available but there is insufficient evidence to support the proposition that the first appellant cannot be treated appropriately in Pakistan. As the First-tier Tribunal pointed out at [15(f)], the daughters earn very good salaries in the UK and the appellants will be able to access good medical care and other support in Pakistan.

23. I do not accept the submission that the first appellant is unfit to fly. There is no updated medical evidence before me to support that proposition. In a letter dated 3 September 2015, Dr Morais stated that the first appellant "*is not suitable to travel at the moment as the control of his INR is proving somewhat difficult. Until he has stabilised INR I believe it is not advisable for him to travel due to the risk of bleeding due to uncontrolled INR and also due to the risk of stroke if it is too law*". By February 2016 Dr Jenkins described the INR as more stable than previously. In the June 2016 letter again refers to an unstable INR but there is no up to date evidence from Dr Jenkins regarding this. Dr Morais described the first appellant's physical health as having deteriorated in June 2016 but there is no up to date medical evidence addressing the control of the first appellant's INR or any other matter that might indicate he is unable to fly. I have not even been provided with any updated evidence from the first appellant about his medical condition. He attended the hearing but did not submit an updated statement. There was no application to call him to give evidence. The daughters did not attend the hearing and have not provided updated statements.

24. Whilst I accept that the daughters may assist the first appellant by attending hospitals and GP appointments with him and visiting at lunch from time to time, the medical evidence does not support the claim that this is necessary. In any event the first appellant has the support of his wife, the second appellant. Mr Read did not draw my attention to any significant health concerns relating to the second appellant. It is difficult to see why the appellants cannot undertake shopping and other daily tasks together, and without assistance from the daughters. Having considered all the evidence together, I find that the appellants are able to, and do, on a regular basis, carry out tasks such as shopping and attending appointments without their daughters. I consider the evidence as to dependency upon the daughters to have been exaggerated. The appellants attended the hearing before me without their daughters.

25. I do not accept that there is that necessary ingredient of "something more" than love and affection between the appellants and their adult daughters in order for there to be family life for the purposes of Article 8(1).

(i) I do not accept that the first appellant's current medical condition requires the level of care claimed from the daughters;
(ii) Whilst the first appellant has health needs, these are met by an appropriate medical regime in the UK and can be met in Pakistan, and do not require any particular additional support from the daughters, albeit I accept that all the parties benefit from the normal love, affection and support generally present in such family relationships;
(iii) The daughters are committed to their parents but do not provide any real or effective additional support beyond that to be expected within the boundaries of normal bonds of love, care and affection;
(iv) I find that the appellants are able to and do mutually support one another;
(v) Although Fareeha has lived with her parents for about a year, they appeared to cope reasonably well for the period when they did not live with one of their daughters before this. Fareeha is 43 and has her full-time employment of her own.
(vi) Aqsa has her own family and does not reside with her parents.

26. The assessment of family life depends on a careful assessment of all the facts. Having carried this out I find that that whilst there is family life between the appellants and their daughters, this does not constitute family life for the purposes of Article 8(1).

Public interest considerations

27. In case I am wrong about the absence of family life for the purposes of Article 8(1), I now go on to conduct the proportionality assessment. I do so on the basis that the relationships between the appellants and their daughters constitutes family life for Article 8(1) purposes.
28. Proportionality is the "public interest question" within the meaning of Part 5A of the 2002 Act. For ease of reference I set out below the relevant extracts from Part 5A.

> **"117B Article 8: public interest considerations applicable in all cases**
> (1) The maintenance of effective immigration controls is in the public interest.
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
> (a) are less of a burden on taxpayers, and (b) are better able to integrate into society.
> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
> (a) are not a burden on taxpayers, and (b) are better able to integrate into society.
> (4) Little weight should be given to—

> (a) a private life, or (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
> (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and (b) it would not be reasonable to expect the child to leave the United Kingdom."

29. By section 117A(2) of the 2002 Act I am obliged to have regard to the considerations listed in section 117B. I consider that section 117B applies to this appeal in the following way:

    (i) The public interest in the maintenance of effective immigration controls is engaged. There is a strong public interest in the removal of the appellants. The first appellant conceded that when he arrived in the UK in 2004 it was his intention to settle – see [8(b)] of the First-tier Tribunal decision. When his visa expired in 2007 he remained in the UK unlawfully, notwithstanding an unsuccessful appeal. The appellants are therefore longstanding overstayers from 2008 and have remained in full knowledge of this – see [6] and [15(g) and (h)]. Mr Read accepted in his submissions that the first appellant could not be said to have acted reasonably or responsibly in overstaying his leave.

    (ii) There is no infringement of the "English speaking" public interest in relation to the first appellant, but there is in relation to the second.

    (iii) The economic interest must be engaged because the appellants have had and will continue to have significant and extended recourse upon the NHS. The daughters have assisted in looking after their parents but not secured private medical insurance for them, even though they are able to afford this.

    (iv) The evidence relevant to the private lives established by the parents is very scant indeed despite the length of time that they have been in the UK. That private life qualifies for the attribution of little weight only.

30. As set out above I proceed on the assumption that there is family life for the purposes of Article 8(1). Although the daughters support their parents, they do not require full-time carers. They would be able to cope reasonably with paid support and medical attention in Pakistan. The daughters would be able to afford this. Whilst the nature and extent of the family life will undoubtedly change and probably reduce, it will not cease. All the relevant actors are likely to be anxious about disrupting the status quo that has existed for many years but the daughters will be able to take it in turns to visit their parents regularly

in Pakistan. They were born in and grew up in Pakistan and continue to have strong links there. The First-tier Tribunal noted at [8(c)] that Aqsa's passport revealed that she often travels to Pakistan.

31. The interference with the family life in question is outweighed by the strong public interest in removing the appellants, given their poor immigration history. This includes entering the UK on a temporary HSMO visa even though there was an admitted intention to settle and a prolonged period of blatant unlawful overstaying. When asked about this in the First-tier Tribunal, Aqsa was unable to explain why no steps were taken to regularise the appellants' status at an earlier point – see [10].

32. I therefore conclude that even if there is family life for the purposes of Article 8(1), the interference with this would not be disproportionate for the purposes of Article 8(2).

Decision

33. The decision of the First-tier Tribunal contains an error of law and is set aside to the limited extent indicated above.

34. I remake the decision by dismissing the appeals on human rights grounds.

Signed: Ms Melanie Plimmer Dated: 12 May 2017
Judge of the Upper Tribunal