



**Upper Tribunal**

**(Immigration and Asylum Chamber)  
HU/07103/2019 (P)**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Decided under rule 34 (P)**

**Decision & Reasons  
Promulgated**

**On 11 November 2020**

**On 16 November 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**MUMTAZ [B]**

**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation (by way of written submissions)**

**For the appellant: Mr M A Rana of Counsel instructed by Shahid  
Rahman Solicitors**

**For the respondent: No submissions received**

**DECISION AND REASONS**

## **Background**

1. This appeal comes before me following the grant of permission to appeal to the appellant by Upper Tribunal Judge Lindsley on 24 June 2020 (served on 14 August 2020) against the determination of First-tier Tribunal Judge Davey, promulgated on 31 December 2019 following a hearing at Taylor House on 13 September 2019.
2. The appellant is a Pakistani national born on 1 January 1944. She arrived in the UK as a visitor on 21 July 2011 and overstayed. She appeals against the respondent's decision of 2 April 2019 to refuse her application for leave to remain on private/family life grounds made on 27 September 2018. No reason is given for her long delay in seeking to regularise her stay. She claims to suffer from a variety of health issues and argues that she has several sons in the UK and no one to look after her in Pakistan. The respondent considered that her health issues could be managed in Pakistan and that there was no basis on which she should be permitted to become a burden on the state. She had previously visited in 2006. She was widowed in March 2003.
3. The appeal came before First-tier Tribunal Judge Davey. He heard oral evidence and submissions before concluding that the evidence had not adequately addressed the issues, that the appellant had not shown that she could not receive care and medical treatment in Pakistan and that the respondent's decision was proportionate. Accordingly, he dismissed the appeal.
4. The appellant successfully sought permission to appeal. Although this was refused by First-tier Tribunal Judge Wilson on 1 April 2020, it was granted upon renewal to the Upper Tribunal.

### **Covid-19 crisis: preliminary matters**

5. The appeal would then have normally been listed for hearing but due to the pandemic this could not be done and instead the grant of permission, sent out on 14 August 2020, encompassed directions in which Upper Tribunal Judge Lindsley expressed the view that the appeal could be decided on the papers. The parties were invited to make further submissions within certain time limits. The appellant has responded to the directions and has not objected to a paper determination but I note that the appellant's representatives did not serve the respondent with a copy of their submissions as directed to do. Nevertheless, I am satisfied that the respondent was properly served with the Tribunal's

directions and has failed to comply. I now proceed to determine the matter on the papers having satisfied myself that it I am fairly and justly able to do so.

### **Discussion and conclusions**

6. I have considered the evidence, the determination, the grounds for permission, the grant of permission and the submissions forwarded by the appellant's Counsel. The case for the appellant was essentially that she could not travel to Pakistan because of her ill health, that she had no one there to care for her and that she was looked after here by her sons.
7. Three grounds are put forward. The first is that the judge failed to consider the appellant's dementia and did not clarify the weight he gave to that or to the concerns the GP expressed about the appellant's mobility and risk of getting lost or to the best interests of her grandchildren. The second is that the judge did not properly reason his dismissal of the appeal. Third, it is argued that the judge erred in rejecting the locum psychiatrist's conclusion that the appellant was not fit to travel. I now consider each in turn.
8. The first ground takes issue with the judge's consideration of factors argued for the appellant and the weight apportioned to the evidence. On the issue of the appellant's ill health, the judge plainly proceeded on the basis that the appellant had been diagnosed with dementia. He noted that the respondent had recognised that the appellant had health issues (at 3), he noted the appellant's statement which set out her dementia and other conditions (at 4) as well as the statements of family members which confirmed the conditions (at 6). He considered the psychiatric report noting that Dr Hussain had not engaged in any discussion of the appellant's dementia or physical conditions (at 7). He noted that the GP had confirmed that the appellant had been diagnosed with dementia in 2018 but had not addressed how the appellant's health issues needed to be managed or her ability to travel (at 9 and 10). He found that there was no evidence to suggest that the appellant's medication would not be available in Pakistan (at 11). Most importantly, he found that there was very limited evidence before him in terms of the analysis and prognosis of the dementia (at 15). He also found that the evidence did not adequately address the extent to which her physical care required the attention of family members or why care and support could not be provided in Pakistan. He found that may not be as satisfactory as care from family but that it was not an option that had even been

addressed before him. He noted that there was no evidence as to what had happened to the home she had lived in or to how she had managed before her visit (bearing in mind that she had been widowed as long ago as 2003) and no details as to the type of assistance she received here that she could not receive from carers in Pakistan (at 15).

9. The claim of poor mobility conflicts somewhat with the claim that she could get lost outdoors on her own, but these were both matters the judge was aware of as can be seen from the determination. Again, the difficulty was that the evidence before him was very limited (at 15). Dr Hussain's report did not touch upon either matter (at 8) and the GP's letter simply mentioned these as issues without providing any further information or details (at 10). It is for the appellant to make out her case and it can be seen from the evidence in this appeal that very limited information had been provided. Over half of the appellant's bundle consists of documents contained in the respondent's bundle; the additional documents include hospital letters relating to the treatment for cataracts the appellant has had on the NHS even though she had no entitlement to use these resources and a psychiatric report.
10. It is also argued that the judge did not consider the best interests of the appellant's grandchildren but other than an assertion that the children enjoyed her company after school, there was no evidence whatsoever before the judge of the nature of their contact with her, how many there were or how often they spent time together, what they did together or how her absence would affect them. As the judge noted at least three children (born in August 2007, December 2005 and January 2001) were old enough to have prepared statements but nothing from any of them had been submitted. Nor had any details of their contact been included in the witness statements from other family members that had been adduced. There are not even any photographs to show contact. Were the appellant to be removed, the children would remain in their homes, would continue to be cared for by their parents and would continue with their lives at school/college and with friends and other relatives. They would also be able to visit the appellant in Pakistan. Without any evidence at all as to how the appellant's departure would impact upon them, the judge could not possibly have found that the appellant's departure was disproportionate for that reason.
11. Ground 2 complains that the decision was not properly reasoned but as can be seen from the above, the judge did consider the evidence and give reasons for his decision. He was severely

hampered by the limited evidence. That is acknowledged to some extent in the submissions which maintain that more evidence would be adduced if the appeal were to be remitted for a fresh hearing; however, that evidence should have been produced for the hearing before Judge Davey and there is no explanation why it was not made available. The appellant was represented throughout and her solicitors would have been well aware of the kind of detail and information that the Tribunal required to make a well informed decision. It is plain when reading the determination as a whole that the judge was not satisfied with the limited evidence before him, that there were several matters which had not been addressed and that on the sparse evidence he did have, it had not been established that the appellant could not be cared for in Pakistan where she still has children and grandchildren. The claim that she has had no one to look after her since she was widowed is not made out given that her husband died in 2003, that she had visited the UK after that and had returned to Pakistan and that she has family remaining in Pakistan (who were omitted completely from her application to the respondent). The judge took her health conditions of dementia, diabetes, cataracts, blood pressure and kidney problems into account but found that these were not serious enough to warrant a grant of leave. It may be seen that the respondent's COI report referred to in the decision letter set out the medical treatment that would be available to the appellant in Pakistan. Whilst it may not be of the same standard as in the UK, as the respondent points out, the UK cannot afford to be the world's hospital and the settled population has a prior right to its finite resources (JA (Ivory Coast) and ES (Tanzania) [2009] EWCA Civ 1353).

12. The third ground takes issue with the judge's rejection of Dr Hussain's claim that the appellant was unfit to travel. The judge had regard to the fact that she was a psychiatrist, that her opinion was based on what the sponsor had said at a one off interview of one hour and that she had not had any information from the appellant's GP. Her statement that the appellant was not at present fit to fly due to her physical health problems and state of mind was made at the very end of her report without any further clarification or reasoning. No consideration has been given as to whether the situation would be different if she were to be accompanied by a family member. In the circumstances, given that the appellant's own GP who has had more contact with the appellant over time and has not made any declaration as to her fitness to fly, it was open to the judge to reject that conclusion.

13. I note that the appellant's application was made in 2018 some seven years after her visit visa expired. No reason has been given for her long period of overstaying. The judge noted the respondent's case that the appellant was a burden on the state and given her extensive use of the NHS's limited resources even since the decision (and notwithstanding the sponsorship declaration in which the sponsor vowed to support her himself), that was a matter that weighed against her in the balancing exercise.
14. There are many other shortcomings in the evidence although these have not been relied on by the judge. No reason is given for why the appellant delayed for so many years before seeking to regularise her stay, why she could not make an entry clearance as an elderly relative in the appropriate way, why she gave conflicting information in her application for leave and in her witness statement as to the number of children she had in the UK and in Pakistan, why the claim of domestic violence by a daughter-in-law in Pakistan made by her representatives (RB:B1) was not mentioned anywhere else in the evidence, why her GP has her registered at a different address to the sponsor with whom she claims to have lived since her arrival and why the Tribunal's correspondence until December 2019 was also sent to a different address.
15. For the reasons given in paragraphs 6-13, I find that the judge's decision does not contain any material errors of law and it is upheld.

**Decision**

16. The decision of the First-tier Tribunal does not contain any error of law. The appellant's appeal is dismissed.

**Anonymity**

17. No request has been made at any time for an anonymity order and I see no reason to make one.

Signed

R. Kekić  
Upper Tribunal Judge

Date: 11 November 2020