



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/09791/2019 (P)

THE IMMIGRATION ACTS

**Decided under rule 34
On 3rd August 2020**

**Decision & Reasons Promulgated
On 11th August 2020**

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**FARZANA KAUSAR
(ANONYMITY DIRECTION NOT MADE)**

Respondent

DECISION AND REASONS

1. Pursuant to directions dated 2 April 2020, sent on 24 April 2020, indicating a provisional view that in light of the need to take precautions against the spread of Covid-19 and the overriding objective, it would be appropriate in this case to determine the issue of whether the First-tier Tribunal's decision involved the making of an error of law and if so whether the decision should be set aside. The Secretary of State made written submissions on 8 May 2020 further to the directions but no response was received on behalf of Ms Kausar, either as to the substance of the appeal or whether it was appropriate to determine it without a hearing. The Upper Tribunal contacted the Appellant's representatives on 23 July 2020 as to any response, to which they confirmed on 24 July 2020 that no response was filed. There was nothing to indicate that that was anything other than a deliberate decision not to make submissions or to object to the procedure proposed.

2. In circumstances where no objections were made to the issues being determined without a hearing and where the Respondent made written submissions, the Appellant choosing not to; it is in the interests of justice to proceed to determine the error of law issues on the papers in light of the written submission available and the full appeal file.
3. The Secretary of State for the Home Department appeals with permission against the decision of First-tier Tribunal Judge Cruthers promulgated on 1 November 2019, in which Ms Kausar's appeal against the decision to refuse her human rights claim dated 17 April 2020 was allowed. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Ms Kausar as the Appellant and the Secretary of State as the Respondent.
4. The Appellant is a national of Pakistan born on 20 February 1959, who entered the United Kingdom as a visitor on 24 January 2017, following which she returned to Pakistan and came to the United Kingdom again on 26 May 2017 and stated that she moved to Ireland the following day. On 12 September 2017 the Appellant was encountered in Belfast attempting to travel and served with an Immigration Notice. The Appellant submitted a human rights claim on 3 October 2017 which was refused on 8 February 2018 with no right of appeal. A further application was made on 8 October 2018, the refusal of which is the subject of this appeal.
5. The Respondent refused the application the basis that the Appellant did not meet any of the requirements of the Immigration Rules under paragraph 276ADE or Appendix FM for a grant of leave to remain. The Appellant's medical conditions were considered but did not meet the high threshold for a grant of leave to remain on that basis and there were no other exceptional circumstances to warrant a grant of leave to remain in the United Kingdom.
6. Judge Cruthers allowed the appeal in a decision promulgated on 1 November 2019 on human rights grounds. It was accepted on behalf of the Appellant before the First-tier Tribunal that the Appellant did not meet the high threshold for a grant of leave to remain on medical grounds under Article 3 of the European Convention on Human Rights and instead only relied upon Article 8 of the same, including by reference to paragraph 276ADE of the Immigration Rules, private life and risk of suicide. The First-tier Tribunal found that the Appellant's circumstances came nowhere near establishing a high risk of suicide and that given her circumstances in Pakistan, there were no significant obstacles to her return and she could not meet the requirements of the Immigration Rules.
7. In relation to the balancing exercise, the First-tier Tribunal identified one neutral factor (that there was a single piece of correspondence with the Appellant's brother in Pakistan) and three factors against the Appellant that were that she did not meet the requirements of the immigration Rules (including that she had never had any intention of returning to Pakistan after entry as a visitor); that she would be financially supported on return

to Pakistan with medical treatment available; and that there was no suggestion that the Appellant's home in Pakistan was no longer available to her. The First-tier Tribunal then identified factors in the Appellant's favour, including that the Appellant was unlikely to get assistance from her brother or his children in Pakistan; that the Sponsor and his family are the only likely family to provide emotional and financial support; that the strength of the Appellant's social networks would have reduced during her residence in Abu Dhabi and that there is a lack of social care for the elderly; that visits from family in the United Kingdom would be limited; that there is medical evidence against a return to Pakistan; that the best interests of the Appellant's grandchildren would be to continue to reside in the United Kingdom with her and that the Appellant does not have recourse to public funds in the United Kingdom. Overall, the First-tier Tribunal concluded that the family life of the individuals outweighed the public interest in immigration control.

The appeal

8. The Respondent appeals on the grounds that the First-tier Tribunal has failed to give adequate reasons for allowing the appeal on human rights grounds because the Appellant's right to respect for family life outweighs the public interest in her removal, particularly in circumstances where she does not meet the requirements of the Immigration Rules and where she would be financially supported with medical treatment available in Pakistan.
9. Further written submissions were received on behalf of the Respondent in response to the directions dated 2 April 2020 (sent 24 April 2020) which gave more detail on the grounds of appeal submitted as follows. The Respondent submits, in summary, that it is unclear why the First-tier Tribunal has allowed the appeal on the basis of findings made; including that the Appellant was not as restricted in her mobility or self-care as claimed; that elderly people could live alone in Pakistan with sufficient finances (even if at nearly 60 the Appellant really was elderly) and where there was no dispute that the Appellant would be financially supported on return and that medical treatment was available; as was her home to return to.
10. Further, that the First-tier Tribunal failed to specify what assistance the Appellant needed on return to Pakistan; failed to take into account that the Appellant had returned to live in Pakistan from Abu Dhabi in 2012; failed to take into account the availability of medical treatment in Pakistan and its own finding that there was not a high risk of suicide when relying on the medical report in the Appellant's favour; failed to acknowledge that the communication would be maintained between the family through modern means and visits; attached too much weight to the best interests of the Appellant's grandchildren which was 'very far from being a decisive factor' and attached positive weight to the Appellant being financially supported when the factors in section 117B(2) and (3) of the Nationality,

Immigration and Asylum Act 2002 were only neutral and do not attract positive weight in favour of an individual.

11. As above, the Appellant did not make any written representations in response to the grounds of appeal or submissions from the Respondent and no Rule 24 response has been filed.

Findings and reasons

12. For the following reasons, I find that the First-tier Tribunal has erred in law by making inadequate findings; coming to a conclusion which fails to take into account properly those findings that have been made, errs in its application of the factors in section 117B of the Nationality, Immigration and Asylum Act 2002 and fails to give adequate reasons for allowing the appeal.
13. First, although not expressly stated in the Respondent's grounds of appeal, there are a lack of adequate findings of fact to enable a lawful balancing exercise to take place. For example, there is a finding that the Appellant's mobility and ability to self-care was nothing like as restricted as she claimed, in particular because of a lack of evidence of any need for an adult to provide any care; an unwillingness of the Appellant to answer questions about day to day functions (but acknowledged that she could manage for herself); the fact that the Appellant volunteers in a shop to work once a week and provides care for her grandchildren when their parents are at work. Although this part of the claim is rejected, there are no findings whatsoever on what, if any, care or support the Appellant requires. Similarly, although there is reference to the Appellant's medical conditions and medical evidence; there is no express finding about what medical needs she has but only an apparent acceptance that medical treatment is available in Pakistan.
14. Further, there are no findings as to the nature and quality of the Appellant's relationships with her family in the United Kingdom and no express finding that family life is established for the purposes of engaging Article 8; albeit it would of course be taken into account as part of the Appellant's private life, it is not clear the basis upon which Article 8 is assessed which is at least potentially relevant to the factors in section 117B of the Nationality, Immigration and Asylum Act 2002.
15. Secondly, the First-tier Tribunal takes into account as positive factors in the Appellant's favour a number of matters which are arguably inconsistent with the earlier findings and/or fail to explain why these are positive factors at all. These include that the Appellant would not receive assistance from family in Pakistan, but given that there are no findings on what assistance she required, there is no explanation as to how this is a positive factor at all and there is no consideration of any alternative support (if needed at all) given the recognition that elderly people with adequate financial resources (which it was found the Appellant would have) can live alone in Pakistan.

16. The First-tier Tribunal also find that the Appellant's residence in Abu Dhabi from 1986 will have impacted on the strength of social networks in Pakistan but fails to acknowledge that the Appellant returned to live in Pakistan in 2012 and in any event makes no actual findings as to the Appellant's networks in Pakistan, a country where she has spent the majority of her life and has family.
17. In relation to family contact, the First-tier Tribunal acknowledges that the Appellant's family in the United Kingdom would provide emotional and financial support to her and would visit, albeit the opportunities for visits would be very limited. There are no reasons given as to why this is a factor in the Appellant's favour given that it is in essence a finding that family life can be maintained after removal; presumably as it was before the Appellant's arrival in the United Kingdom.
18. In relation to the medical evidence, there is a simple statement that the reports of Dr Moosa provide support for the Appellant's claim to remain in the United Kingdom but no further explanation is given even despite the earlier references in the decision discounting the risk of suicide set out in the same reports and the finding, contrary to the medical reports, that the Appellant has overstated her inability to self-care and mobility issues. There is no clear or consistent assessment of this medical evidence.
19. Thirdly, the First-tier Tribunal take into account as a positive factor that the Appellant can be maintained and accommodated without recourse to public funds; a factor which is at best neutral under section 117B(3) of the Nationality, Immigration and Asylum Act 2002.
20. Fourthly, in addition and although not expressly stated by the Respondent, it is a *Robinson* obvious point that although the First-tier Tribunal has set out the factors in section 117B of the Nationality, Immigration and Asylum Act 2002 early in the decision, there is no clear application of the same. In particular, there is no recognition that section 117B(2) or (4) apply given that it is stated that the Appellant only speaks a little English and that she has been in the United Kingdom unlawfully since her arrival.
21. Finally, when taking all of these matters into account, there are no clear reasons given as to why the factors in the Appellant's favour (even if all taken into account without the difficulties identified with a significant number of them above), to which little weight is to be attached given she is in the United Kingdom unlawfully; outweigh the interests of immigration control particularly given the Appellant's history of deception seeking to enter the United Kingdom (to which significant weight should be attached) and support available on return.
22. Overall and even without the *Robinson* obvious points not expressly relied upon by the Respondent, there are clear errors of law in the First-tier Tribunal's inadequate findings, inadequate reasoning and in the final balancing exercise undertaken for the purposes of Article 8 of the

European Convention on Human Rights. For these reasons the decision on Article 8 must be set aside and the appeal remade on this point only. As accepted before the First-tier Tribunal, the Appellant did not meet the threshold for Article 3 on medical grounds and I preserve this together with the unchallenged findings that the Appellant does not meet any of the requirements of the Immigration Rules for a grant of leave to remain.

23. Although some findings of fact have been preserved, there are not insignificant further findings of fact required in relation to the Appellant's private and family life for the purposes of Article 8 such that this is a case which is more appropriately remitted to the First-tier Tribunal for determination.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision in relation to Article 8 of the European Convention on Human Rights (with preserved findings of fact as above in relation to Article 3 and the Immigration Rules).

I set aside the decision of the First-tier Tribunal and remit the appeal to the First-tier Tribunal (Manchester hearing centre) to be heard before any Judge of the First-tier Tribunal except Judge Cruthers.

No anonymity direction is made.

Signed G Jackson
2020

Date 3rd August

Upper Tribunal Judge Jackson