



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10121/2019**

THE IMMIGRATION ACTS

**Heard at Manchester via Skype
on 12th October 2020**

**Decision & Reasons Promulgated
On 19th November 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**JAMILA BEGUM
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Lemer instructed by Farani Taylor Solicitors
For the Respondent: Mr Tan Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Gurung-Thapa ('the Judge) promulgated on 5 November 2019 in which the Judge dismissed the appellant's appeal on human rights grounds.
2. Permission to appeal was granted by another judge of the First-tier Tribunal the operative part of the grant being in the following terms:

- “2. The judge has arguably erred in law by failing to make findings on the issues before her which included whether there were very significant obstacles to the appellant’s reintegration in Pakistan upon return, alternatively whether there were exceptional circumstances which would enable the appellant to succeed on Article 8 grounds outside of Appendix FM and paragraph 276ADE.”

Error of law

3. The appellant is a citizen of Pakistan born on the 1 January 1955 who applied for leave to remain in the United Kingdom on the basis of her family and private life.
4. Having considered both the documentary and oral evidence the Judge sets out her findings of fact from [55] of the decision to the challenge outside the Immigration Rules.
5. On behalf of the appellant Mr Lemer submitted the grounds raise a wide range of issues in support of the claim the Judge did not address all relevant matters. It was submitted the essential question in this appeal was whether a person could care for the appellant on return to Pakistan but that the Judge had focused upon the position in the United Kingdom as demonstrated by the findings at [56], [60] and [73]. It is argued this distracted the Judge from considering the real issue which was the appellant’s position on return.
6. It was submitted that the findings in relation to both the appellant’s medical condition and support that will be available in Pakistan were not reasonably open to the Judge for the reasons set out in the grounds.
7. It asserted the Judge failed to give adequate reasons in support of the findings rejecting the appellant’s evidence that sufficient assistance and support is required but not available on return to meet her health and care needs.
8. I find it is important to read this decision as a whole to understand the manner in which the evidence was given and considered. The Judge sets out her core findings between [72 – 74] which cannot be considered in isolation from the rest of the determination.
9. In these paragraphs the Judge writes:

“72. For the reasons given above, I reject the assertion that the appellant’s health conditions has seriously deteriorated since she entered the UK in July 2018. I find that the family members in the UK very well knew about the appellant’s health conditions which they described as being serious even when she was in Pakistan. Indeed, the oral evidence of the appellant’s daughter-in-law confirmed that the appellant has serious health concerns because the last few visits, she had issues and was not the same person as she used to be years ago. They had to push her to take medication. When asked why the appellant came on a visit visa on a temporary basis as opposed to a settlement application, the witness replied she does not know. Whilst put to the witness that the appellant came here on a temporary visa when she could have made a settlement application given the serious concerns why no

application was made to come here permanently. She replied because this time when she came her health deteriorated from bad to worse. The witness was asked if the condition was bad or serious by no application was made before it got worse to which she replied now since she has been looking after the appellant, she was knocked like this. Her mental state does not seem right to her.

73. I find it reasonable to conclude that the family knew very well the appellant's health conditions were serious and yet they waited for her nephew Asad to leave Pakistan then the appellant came here as a visitor and six months later submitted a settlement application. On a holistic assessment of the evidence, I cannot accept that there has been a marked deterioration in the appellant's health conditions which led her to submit a human rights application in January 2019.
 74. It clearly is the case that the appellant has a home to return to and also has family members in the form of her sister Rahila and her husband. The evidence was that Rahila's husband also used to live with the appellant in her home on occasions. I find no satisfactory evidence has been put forward to suggest that the appellant would not be able to live in Pakistan with the help and support of Rahila and her husband either in her home or at Rahila's husband's house in Sohawa. I cannot accept the assertion that the appellant will be returning as a lone female."
10. This is a human rights appeal which required the Judge, having made her factual findings, to balance the competing interests to ascertain whether the respondent had established that her decision was proportionate to any interference with a protected right. In relation to that aspect the Judge writes at [75 - 79]:
- "75. Section 117B(5) confirms that little weight should be given to a private life established by a person when in the UK with a precarious immigration status. The appellant has had a precarious immigration status in that she entered the UK as a visitor and has only ever had limited leave to enter, so this does apply to her. This relates to private, as opposed to family life.
 76. I find that family life can be maintained through visits to Pakistan and through modern means of communication. The appellant entered the UK as a visitor, and she did not therefore have a legitimate expectation of being able to remain in the UK on the grounds of either having enduring family life with the children or on the basis of having established family life with her children since her arrival as a visitor. I find that there is no satisfactory reason as to why she cannot return to Pakistan and continue to live in her own house with financial assistance from the sponsor and the practical and emotional support from Rahila and her husband. I find that it is also relevant to take account of the fact that the sponsor stated that he had not checked about professional care and said that there it is not available and even if find someone there is the issue of things being stolen.

77. The appellant's two grandchildren confirmed that they had visited Pakistan on a number of occasions. Her granddaughter Huma confirmed that she has visited Pakistan 3/4 times and her last visit was in 2017 when she went with her parents and siblings. The reason for the visit was to visit the appellant which was in February 2017 and they stayed for 4 weeks. The last visit in 2017 is quite relevant because the appellant was reliant on her sister for her daily activities and that she needed somebody to take her to the toilet as she needed help with bathing. Huma stated that he also helped along with her mother during that occasion. According to the grandson Ismaeel he stated that he visited Pakistan on two occasions in 2015 and the second visit was in 2017/2018.
78. It is said that according to Dr Latif the appellant is unfit to fly and therefore would make her fall into a limbo situation and Ms Gherman relied on the case of **RA (Iraq) [2019] EWCA Civ 850** where guidance was given when an individual is not capable of being removed. I find the appellant case is entirely different and with sufficient assistance there is no reason why she would not be able to fly.
79. Looking at all the circumstances and balancing the respective interests of the parties, I find the decision is proportion."
11. The thrust of the challenge to the decision, both written and oral, claims the Judge failed to consider the totality of the evidence, made inappropriate speculative findings not based upon the evidence, and failed to give sufficient reasons or explanation for the findings made.
12. The Judge was clearly aware of the medical evidence provided and the assertion that the Judge was not has no arguable merit. The Judge properly noted that the appellant entered the United Kingdom as a visitor and was aware of the appellant's immigration history and UK family composition.
13. The Judge clearly took into account the evidence of the family members both in relation to their claims concerning the appellant's medical condition, deterioration, and lack of adequate fair care facilities in Pakistan, but did not find that the claims that they made were credible and clearly was of the opinion that the evidence being led was that the family thought was more likely to secure a finding that the appellant will be able to remain with them in the United Kingdom. Just because the Judge did not give the evidence the weight the appellant and family would have liked it to have been given does not mean it was not properly considered.
14. The Judge was entitled to note that no application had been made under the Adult Dependent Relative rule. The appellant's son claiming that he had not looked into it does not establish legal error in the Judge's concerns. If the appellant's medical condition was such as to warrant an application on this basis no doubt the family would have looked into it and such an application made, rather than the appellant entering the United Kingdom as a visitor.

15. The Judge appears to have been concerned that the chronology indicated that what had occurred was an attempt to circumvent the adult dependant relative rule.
16. The Judge noted the appellant owns her own house, received treatment for her medical condition in the past which was available on return to Pakistan. In relation to the assertion the appellants medical condition taken a downturn whilst in the United Kingdom, the Judge noted Dr Latif referred to antidepressants in a January 2019 report which indicated the appellant had received the same in Pakistan. The Judge was entitled to express concern about the lack of evidence regarding medical treatment received in Pakistan or evidence to show the same would not be available to her on return, clearly indicating the Judge was looking to the situation on return in addition to the position in the UK.
17. It was particularly noted that Dr Latif makes no reference to the fact the appellant owns her own home and has relatives in Pakistan.
18. Mr Tan in his submissions raised the point that although the grant of permission refers to paragraph 276ADE of the Immigration Rules, at [21] the Judge writes:

“21. Miss Gherman confirmed that the only issue is Article 8 ECHR outside the Immigration Rules. Mr Swaby stated that the appellant came to the UK as a visitor and that relevant adult dependent relative rule is an important aspect through which the Tribunal should consider Article 8.”
19. It is not made out the Judge erred in law in not considering 276 ADE when she was not asked to do so.
20. To have succeeded in an application under the adult dependent relative rule the appellant would have been required to have been outside the UK and need long-term care from a parent, grandchild, brother, sister, son or daughter who is living permanently in the UK. The appellant would therefore have had to make the application from Pakistan which she did not do.
21. It is also important that an applicant is able to prove all of the following:
 - They need long-term care to do everyday personal and household tasks because of illness, disability or your age
 - the care they need is not available or affordable in the country you live in
 - the person they will be joining in the UK will be able to support, accommodate and care for you without claiming public funds for at least 5 years
 - they are 18 or over.
22. The Judge does not dispute the appellant has medical problems and needs, nor that the family in the United Kingdom who are found to be of means would not be able to accommodate and meet the living costs of the appellant in the United Kingdom without claiming public funds for the requisite five year period, or that the appellant is over 18.
23. The core finding is that care to meet the appellant’s needs is available and affordable to her in Pakistan. The Judge make specific findings in

relation to other family members which, although challenged in the grounds of appeal, has not been shown to be findings outside the range of those available to the Judge on the evidence. It was for the Judge to give the evidence the weight she thought it deserved. The Judge was clearly not satisfied the claim that no family support was available in Pakistan was credible.

24. The Judge also specific notes at [76] that it was relevant that the sponsor confirmed he had not checked out professional care claiming it was not available and even if they found somebody there was an issue of things been stolen. If the family have not undertaken proper enquiries in relation to the availability of care for the appellant it is hard to see how they could say such care is not available. A simple search of the Internet discloses a number of commercial care home providers in and around the appellant's home area. These, like many in the United Kingdom, are specialist providers for those requiring care in old age, either in their own home or in a residential setting. The claim that any paid employee would steal the appellant's property is no more than speculation based upon an unfair generalisation that those who dedicate their professional lives to caring for the elderly and those in need are thieves. Whilst it is accepted there are individuals in the care sector who do not exercise the required degree of professionalism there was no evidence to show that this was position in all of Pakistan.
25. The appellant will therefore have failed in an application made under the adult dependent relative provisions as she would not have been able to show that the care, she needs is not available or affordable in Pakistan. The appellants care needs have been met in the past and there was no evidence to show that they could not be in the future. The Judge was entitled to take this fact into account as part of the proportionality exercise as she did.
26. The Judge was also entitled to find that the appellant is not a person who will fall in limbo and any assessment of whether she is fit to fly at the appropriate time will be made by the respondent when this issue arises.
27. I find that the appellant fails to establish arguable legal error material to the decision to dismiss the appeal. While the appellant and family members disagree with the finding and want the appellant to be allowed to remain in the United Kingdom with them, article 8 does not give a person the right to choose where they wish to live. The findings are adequately reasoned, and weight given to the evidence has not been shown to be irrational. It has not been shown the conclusion reached is not one within the range of those reasonably open to the Judge on the evidence.

Decision

- 28. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

29. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 16 November 2020