IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006483
UI-2022-006484

First-tier Tribunal No: HU/57948/2021
HU/57949/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

16th October 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MUHAMMAD HANID MALIK
KENEEZ FATIMA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Alam instructed by Law Lane Solicitors.
For the Respondent: Ms Young, a Senior Home Office Presenting Officer.

Heard at North Shields on 1 September 2023

DECISION AND REASONS

1. In a decision promulgated on 27 June 2023 the Upper Tribunal found material legal error in the decision of a judge at the First-tier Tribunal who allow the appeals of the above Appellants against the refusal of applications made on 22 March 2021 for leave to remain in the United Kingdom on medical grounds outside the Immigration Rules. Those applications were refused on 29 November 2021.
2. The Appellants are a husband and wife, both citizens of Pakistan. The first appellant was born on 20 March 1923 and his wife on 1 January 1944.
3. The Upper Tribunal in the error of law finding directed that the First-tier Tribunal Judge's findings set out between [25 – 56], with the exception of the conclusion as to proportionality, shall be preserved findings as they had not been challenged by the Appellants. The issue to be considered at this further hearing is limited to the proportionality of the decision having undertaken the required holistic assessment on the basis of the updated evidence.
4. The preserved findings can be summarised in the following manner:

a. The Judge did not accept the Sponsor could not remember when the family home in Pakistan was allegedly sold and was found to be deliberately evasive in answering questions. The evidence shows the first appellant owned land in Lahore which is used for residential purposes. The Sponsors claim the land was no longer available is not supported by documentary evidence to demonstrate the true nature of the property or that the family home had been sold, leading the First-tier Tribunal Judge to conclude on the balance of probabilities the Appellants had not shown they would have no home to return to in Pakistan [29].
b. Many aspects of the Appellants account of their lives in their statements are not consistent with the evidence presented orally or in the documentation. The claim the journey to Pakistan will be beyond the ability of the Appellants was contradicted by the Sponsor who put forward a proposal he would fly with his father to Pakistan in order to release funds in a bank account there. The First-tier Tribunal Judge finds the contradiction in the evidence was indicative that the Sponsor will say whatever he feels is needed to persuade the Tribunal that his parents should be able to remain in the United Kingdom, no matter what the law states [30].
c. The Judge did not accept as credible a claim the first appellant had not led an independent life for the past decade or the oral evidence of the Sponsor that his fathers depression being suffered was partly caused by the Covid restrictions as his parents could not go to the Mosque or for a short walk or due to their uncertain immigration status, as the restrictions did not prevent people from going for short walks and promoted daily exercise and that it was open for the Appellants to go outside in order to benefit their mental health [31].
d. The First-tier Tribunal had not been provided with details of the Appellants immigration history prior to 2012. The First-tier Tribunal accepted first appellant's records showed one visit in 2006 and then no further visits until 2014. The second appellants record shows a visit in 2006 followed by further visits in 2007, 2010 and 2015. The First-tier Tribunal finds information on the medical records indicates the Appellants were in the UK and brought themselves to the attention of the local GP surgery prior to their arrival in 2013 and would have been aware that NHS treatment will be available for the ailments for which they suffered. The First-tier Tribunal found they found they could access treatment for their medical needs that cost less than that available to them in Pakistan [32].
e. The diagnosis of depression for each of the appellants appears to have come after speaking to either their son or their daughter-in-law. The First-tier Tribunal noted that as the doctor records, as he was unable to speak with the first appellant he spoke to his son, the Sponsor, who spoke on his behalf and language difficulties meant the daughter-in-law spoke on behalf of the second appellant. The First-tier Tribunal found no information was taken directly from either appellant. There is no information to indicate if medication provided is making a difference or is needed at the time of the hearing before the First-tier Tribunal, and no diagnostic tools referred to in respect of the diagnosis warranting the weight being placed on the information in respect of the appellant's mental health [33].
f. Dr Mukhtar's reports were written after videoconferencing in which the Sponsor spoke on behalf of the Appellants and advised the doctor of the various health concerns that he had in connection with his father which may not necessarily be the concerns of the first appellant. Dr Mukhtar's statement it was unlikely personalised healthcare will be available in Pakistan was not

supported by evidence of the source from which he formed this opinion. There is no information in the report as to what the negative effect leaving the United Kingdom is like to have on the Appellants or that it would, in fact, lead to the diminishing of their life expectancy or their overall well-being. There is a conclusion in Dr Mukhtar's report that a favourable outcome of the appeal was likely to have an overall beneficial effect on the first appellant's mental and physical health [35].

g. The First-tier Tribunal found the claims by the Appellants grandson, Sohail, were greatly exaggerated and that there was no independent evidence of his grandparents having to assist him in his life or what of aspects this had been done. The Judge finds the relationship is no more than that of grandparents and grandson with insufficient evidence to demonstrate the removal of his grandparents would have a negative effect on the grandson's mental health or well-being [36].
h. The Judge was of a similar view in respect of the Appellants granddaughter. There was nothing in the evidence that took the relationship beyond a normal second-generation one. There was no independent evidence removal of her grandparents would have any effect on her mental health as at the age of 10 she will be able to adapt to life where her grandparents are not present [37].
i. There was insufficient evidence to demonstrate the Appellants participation in any community life in South Shields or that they had established any life independent of their son and his family that reached the threshold of a private life in the UK. Little weight was placed upon letters from individuals speaking of their involvement in the Pakistani community within the UK as the Judge finds they will not have knowledge themselves and are recording what they have been told by the Appellants family. The Judge finds the extent of the involvement of the Appellants in the community contradicts their claim they have little or no life outside of the family home and their various medical appointments [38].
j. The Judge placed little weight upon the letters from family members describing the respondent's decision is being unfair and contrary to common human decency. Had the Appellants abided by the terms of their entry clearance and returned to Pakistan at the end of their leave to enter in 2014 they would not have found themselves in the position they find themselves in now, for which they are wholly responsible. The Judge finds a flagrant disregard for the Immigration Rules and an attempt to skip the queue, without making a payment for the privilege, should not be rewarded [39].
k. The Appellants written evidence and that of their sponsor is wholly incredible. The Judge did not believe they found themselves inadvertently in the position they are in. The Judge finds they have waited until the first appellant was so infirm due to his advanced years that it may not be possible for him to return to the land of his birth, although the Judge notes the sponsor's claim he would take his father to Pakistan to unlock a bank account [40].
l. The Judge finds the Appellants have a private life in the UK which engages Article 8 ECHR and that the issue is whether the extent of the interference in that private life will be proportionate to the legitimate aim, on the balance of probabilities [41 – 42].
m. The Judge finds the Appellants private life has been formed in the UK during the relatively short period of time, having only been in the country since 2013, when they knew their right to remain here was limited. They made in country application which were refused before one which resulted in a grant of leave which expired in 2016. The Appellants then remained in the UK unlawfully and only made a further application in March 2021. Their status in the UK has always been precarious as the private life has been formed during the time

they had no legitimate expectation they will be able to remain in the UK indefinitely. There is insufficient evidence of any private life outside the family home of their son, other than medical appointments, the Appellants do not speak English and their interaction with others outside the home is restricted [43].

n. The Appellants son supports them financially in the UK there is no reason why he could not continue to support them financially in Pakistan. It is open to the sponsor and his wife as well as the grandchildren to make trips to visit them in Pakistan [44].
o. There is evidence of medical treatment available to the Appellants to Pakistan and the care that is available in charity run homes for the elderly. The Appellants claim that treatment and care would not be available has not been supported with independent documentation or that such care is insufficient because it is not enough. The first appellant has a sister in Pakistan with no information in respect of her living conditions provided. It was not made at the sister would not have sufficient accommodation for the Appellants to share until they re-establish themselves or until the property they have in Lahore is brought up to standard so they could live in it [45].
p. The sponsors claim his parents need emotional support which he provides was noted by the Judge who found the decision would have to be made by him as to how he could provide that support for them if they are in Pakistan rather than in the UK [46].
q. The Appellants claim they did not have a home in Pakistan and the sponsors claim he had sold the house he owned that his parents lived in, although he could not remember the date, is of concern to the Judge who found insufficient reliable evidence of investigation by them into another property being available for the Appellants to live in, either by purchasing or renting. The Judge did not find to the required standard that it had been made out the Appellant would have nowhere to live in Pakistan [47].
r. Taking all circumstances into consideration it will be proportionate to expect the Appellants to return to Pakistan as, whilst they may initially face hardship, it would not be to the extent of being unjustifiably harsh or sufficiently compelling or compassionate [48].
s. In relation to section 117 of the Nationality, Immigration and Asylum Act 2002, the Appellants do not speak English, will not to take up employment or contribute to society financially in the UK, there is no indication the Appellants would receive private healthcare in the long term should they require the same in the future, they are already in excess of £50,000 in debt to the NHS, their healthcare will be an additional burden on the NHS, the Appellants are living with their sponsor and are maintained by him, therefore it is unlikely they will have to resort directly to public funds, although any access to social care or at home healthcare in the long term would also be a drain on the public purse [49].
t. The Appellants relationship with their sponsor, his wife and their grandchildren did not exist prior to their arrival in the UK. The relationships are part of the private life they have formed in the UK, albeit over a short period of time when they had no legitimate expectation to remain in the UK, warranting very little weight being attached to it. The Appellants failed to establish the relationship the sponsor is beyond that of normal ties between a parent and adult child. It is reasonable to expect the Appellants to leave the United Kingdom [50].

Discussion and analysis

5. In his addendum witness statement prepared for the purposes of the Resumed hearing the sponsor, the appellant's son, claims they are aged 95 and 79 respectively, that their health has deteriorated considerably since his original witness statement of 24 January 2022, that they are dependent upon him and his wife, that his father is completely immobile and reliant upon the family for the smallest daily tasks, that it is becoming increasingly difficult to care for them with the stress of the appeal, that they are not fit to travel, that they have no remaining family in Pakistan to look after them, that his father's sister is 90 years old and requires personal care.
6. It is important not to conflate the question of whether the appellants are entitled to succeed with this claim on human rights grounds with the operational question of whether the Secretary of State will remove them from the United Kingdom. It may be that with individuals of this age, if their appeals fail, there have to be a meeting of the Removals Committee to discuss the feasibility of removal and what arrangements may be required. There is not, however, before me evidence that the appellants will not be removed.
7. The sponsor also referred to purchasing alternative property with disabled facilities but that will only be relevant if the appeal is allowed. It is not suggested the current accommodation is not suitable for the appellants or that it has become statutorily overcrowded whilst the appellants have remaining with their son to date.
8. The debt to the NHS is admitted with sponsor claiming that he has agreed a payment plan in the sum of £80 per month.
9. The sponsor repeats his claim that his parent's circumstances are compelling and warranted the exercise of discretionary powers under Articles 3 and 8 ECHR in their favours.
10. There was no challenge to the factual matrix in the appeal and the matter proceeded by way of submissions only.
11. On behalf of the appellants Mr Alam referred to the issue of physical and emotional support, that the First-tier Tribunal had heard evidence and saw the appellants, and that the real evidence seen of the appellants before the Tribunal was relevant to the proportionality assessment.
12. Mr Alam submitted that although the authorities highlight that overriding immigration control requires compelling circumstances there was a distinction to be drawn between compelling circumstances and exceptional circumstances. The test was whether there were very compelling circumstances. Mr Alam also submitted that very compelling and compelling were different but accepted there was a high threshold that the appellants needed to prove.
13. Mr Alan submitted that section 117, in relation to the weight to be given to the evidence, said little weight not no weight and that different factors could warrant different weight being given. It was necessary to consider points for and against and that the wider context was important.
14. Mr Alam referred to [52] of the decision of the First-tier Tribunal in which the Judge found:

> 52. It is only in that regard that I now consider the age of the first Appellant and his current infirmity, as I accept that even if he has previously been able to get out and about by himself, is no longer able to do so. First Appellant is in a wheelchair and appeals very frail. The medical reports confirm the state of his physical debility, although I have not been persuaded about his mental debility. It appeared to follow the proceedings quite well. The facts and circumstances of this appeal as it is at the date of the hearing, in my judgement, the first Appellants age alone would make it unjustifiably harsh on him to expect him to return to Pakistan. I have set out above all the reasons why, but for his age, and infirmity, mean that in normal circumstances you should be returned to Pakistan. If the burden on the public purse is presence in the United Kingdom would cause, I would expect that any necessary

> care will be provided by his family, according to the wishes and promises they have made before me, or that he would have access to public funds.

15. Mr Alam submitted this finding is relevant as the first appellant is in a wheelchair and frail. He also referred to the sponsor's claim of provision of emotional support and claim the First-tier Tribunal had not given proper weight to the medical evidence regarding the appellant's mental health and issues, although finding the sponsor was providing emotional support.
16. I pause at this stage as the First-tier Tribunal Judge was found to have erred in law in making contradictory findings where there is on the one hand, following a detailed assessment of the holistic evidence which included the appellant's health needs and age, a finding it is proportionate to return them to Pakistan and the finding at [52] which suggested for similar reasons it was not. It is a preserved finding that the appellants had not made out there would not be adequate accommodation and that there is insufficient evidence the appellants could not be properly accommodated, the finding they will have the support of their UK based family albeit initially at arms length, the finding there is a family member in Pakistan which clearly show this is not an appeal in which the appellants would be abandoned without necessary care or support in Pakistan.
17. It is also of concern that in [52] the Judge discounts any potential future additional burden upon the public purse by reference to a promise made by the sponsor, when the Judge also makes adverse findings in relation to sponsor's evidence. It is clear the sponsor will say what needs to be said to enable his parents to remain in the UK. That is understandable but is a point that cannot be ignored. It is also not clear how the First-tier Tribunal judge factored into the question how UL based family members will be able to meet the needs of their parents without recourse to public funds if those needs became serious as a result of further illness based on old-age or other related circumstances.
18. The submission of Mr Alam that if the appellants were returned to Pakistan they will be living as isolated people in that country I do not find has any merit, as that is contrary to the preserved findings in the alternative. There is, in any event, no additional evidence providing guidance or an updated professional medical opinion on the impact upon the appellants of their circumstances as there will be in Pakistan, or to support the claimed adverse effect as a result of isolation or otherwise. The appellants have each other and it is not proposed that one will be returned and the other will not.
19. Mr Alam referred to the issue of physical mobility, distress, and the need for emotional support, but when asked whether there was evidence of the same and the impact upon the appellants of removal, there was no medical evidence in the bundle concerning consequences or addressing these issues. The First-tier Tribunal had addressed the issue of emotional support in the determination. I accept the submission that the direct emotional support provided on a day-to-day basis by the family in the UK would not be available in Pakistan but that, on its own, is not enough.
20. In relation to the impact upon the family in the UK, a relevant factor pursuant to Article 8 ECHR in light of the finding the House of Lords in Beoku-Betts (FC) (Appellant) v Secretary of State for the Home Department (Respondent) [2008] UKHL 39, I accept that if the appellants are returned their son, the sponsor, will remain in the UK with his family. I accept that the normal course of events for elderly relatives is that they will eventually die, as we all must at some point. The submission that this was relevant in light of the emotional impact upon the sponsor and worry that his parents would have no support is noted, but there is insufficient evidence to show this is determinative. It is one part of the appellant's case.

21. The submission that little weight should be given to the fact the appellants status has been precarious has no merit. Although they may have made applications to try and regulate their status in the United Kingdom none have been successful, and the appellant and sponsor will be aware that they have remained in the UK illegally.
22. I do not find a submission by Mr Alam that there was no need for additional medical evidence as it was obvious there will be an emotional impact gets round the problem that even if the statement there will be emotional consequences is obvious, the impact and extent of the same and its relevance to the appeal should have been supported by medical evidence if such a submission was to be made.
23. Mr Alam in his submissions submitted the little weight provision must not be treated as being determinative there was sufficient to outweigh the public interest.
24. On behalf of Secretary of State Ms Young submitted that the First-tier Tribunal judge in findings that have been preserved did not accept that the appellants could not return to Pakistan, a finding which it was submitted was consistent with the evidence that has been provided.
25. I accept that analysis by the First-tier Tribunal in the preserved findings which are consistent with the evidence. The appellants failed to show that the sponsor will not be able to provide support for his parents if they are return to Pakistan or that they would not be able to live in Pakistan.
26. I make a finding that the appellants status in the United Kingdom has always been precarious or illegal.
27. It is also important to note that the appellants did not apply to enter the United Kingdom under the dependent relative provisions but rather applied for and obtained a visit visas but then overstayed.
28. Provision exists within the Immigration Rules for a person who needs long-term care, from a parent, grandchild, brother, sister, son or daughter who is living permanently in the UK to apply for leave as an adult dependent relative. Such an application can only be made from outside the UK unless an individual has secured leave on that basis and is applying to extend their stay on this visa.
29. Not only did the appellants not make the application in Pakistan there are also other requirements that need to be met by them. They are, the need for long-term care to do every day personal and household tasks because of illness, disability or old age, that they are over 18 years of age, that the care they need is not available or affordable in Pakistan, that the relative they are joining in the UK can accommodate and care for them.
30. Although it is claimed the appellant circumstances have deteriorated, the first appellant came to court in a wheelchair, and appeared to have hearing problems, the second appellant was far more engaged and made comments at various points during the hearing in response to the interpreter interpreting the submissions being made for her.
31. The preserved findings, which I find have not been shown as being unsustainable are about the care of the appellants require which has not been shown not to be available in Pakistan both in terms of their medical needs and social care needs.
32. The assessment of whether the appellants could satisfy the adult dependent relative route, if there were in Pakistan, would result in a finding that on the basis of the evidence considered as a whole in this appeal they had not established that they would be able to succeed. If they return to Pakistan and things deteriorate further such that there is sufficient evidence to show they could meet the requirements of this provision of the Immigration Rules they, as for any other

person, will be able to make an application that can be considered on its merits at that time.

33. There is merit in Ms Young's submission that the appellants came to the UK for medical treatment which is a preserved finding of the First-tier Tribunal Judge. The lack of genuine intent to return to Pakistan is also demonstrated by the fact that since the extension of their visa expired no effort appears to have been made by the appellants to return to Pakistan.

34. It is not disputed that the appellants owe a debt to the NHS as a result of treatment they have received in the UK to which they are not lawfully entitled. A letter in the appellants updated bundle indicates there still remains a substantial outstanding debt in the region of £33,000 which is being repaid at £40 per calendar month. The sponsors claim to be paying £80 per calendar month is not reflected in the content of the NHS letter.

35. An NHS debt arises if a person has treatment at a hospital or specialist clinic in the UK and they are not (a) ordinarily resident in the UK (b) have not paid the immigration health surcharge as part of their current UK visa, or (c) they are exempt from the immigration health surcharge. The appellants are not ordinarily resident in the UK, that being in Pakistan. They did not make a lawful visa application for leave to remain prior to incurring the debt and so did not pay the immigration health surcharge. There is no evidence they are exempt from the surcharge. The relevant regulations provide that an individual had two months to pay from the date of the invoice and that if not the debt may be added to their immigration records. As the debt is in excess of £500 for treatment after 1 July 2021 it is therefore likely to be added to an individual's immigration record, although if either the debt is paid in full, or the appellants agreed to pay in instalments it may not. The appellants cannot argue that there is anything irrational about the Secretary of State attempting to protect the NHS, especially in current times, from individuals using it who have no right to do so free of charge. Even if there was disagreement about the outstanding amount, or the instalment payments, it was not disputed that instalment payments were being made. If the debt is therefore removed from the appellant's immigration record it will not affect any visa application for entry to the UK. The existence of the debt may therefore not be an insurmountable obstacle preventing lawful re-entry at a later date.

36. A further point made by Ms Young is that the sponsor knew the appellants were using the NHS when they had no right to do so. The First-tier Tribunal already expresses concerns about the reliability of the sponsors evidence in the preserved findings.

37. I was not provided with a complete updated picture in relation to the medical evidence. There is insufficient evidence permitting me to depart from the findings of the First-tier Tribunal in relation to the impact upon the appellants of their removal from the United Kingdom in both physical and psychological terms. Although the sponsor refers to providing emotional support to his parents, a point raised by the First-tier Tribunal is that if his parents were removed he will have to consider how he provided such support, the evidence does not show this was an irrational conclusion.

38. What is not made out is that the family could not visit Pakistan. It has not been made out that relevant medical treatment is not available or accessible in Pakistan.

39. The finding of the First-tier Tribunal Judge in relation to the precarious status of the appellants is a sustainable finding that I also make.

40. The First-tier Tribunal Judge's findings that were preserved have not been shown to be unsafe and remain sustainable, including those relating to sections 117 A – C of the 2002 Act. This is a case with a strong public interest from a number of

angles including those identified by the First-tier Tribunal, warranting substantial weight being given to the public interest.

41. I accept there is, as in any case of this nature, strong feelings on the appellant's side. I do not doubt the sincerity of the sponsor's wish that his parents be allowed to remain with him in the UK but there is a very strong public interest in it be known that the way in which the same should be achieved is by making a proper application under the Immigration Rules which can be considered on the evidence by an Entry Clearance Officer. There is always a deterrent element in such cases in making it clear that people should not expect to be allowed to queue jump by remaining in the UK illegally. Previous applications made by or on behalf of the appellants to regularise their status and have not been successful.

42. Having given very careful consideration to all the evidence and the parties respective arguments I find for the reasons set out above, including the preserved findings and the public interest arguments set out in the reasons for refusal letter, that the Secretary of State has discharged the burden of proof upon her to the required standard to show that the decision is proportionate. Very compelling circumstances have not been made out, even if compelling, sufficient to outweigh the public interest on the facts. On that basis I must dismiss the appeals.

Notice of Decision

43. Appeals dismissed.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber
2 October 2023