IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001213
First tier number: HU/61282/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of November 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

SARFARAZ KHAN
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Winter
For the Respondent: Mrs Arif, Senior Presenting Officer

Heard at Edinburgh on 5 November 2024

DECISION AND REASONS

1. The appellant is male citizen of Pakistan born on 10th June 1953. He made a human rights (Article 8 ECHR) application on the basis that she had established family life with his son (and his son's family) in the United Kingdom and that it would be disproportionate to remove him. The First-tier Tribunal dismissed the appeal. The appellant now appeals to the Upper Tribunal.

2. Granting permission, First-tier Tribunal Judge Dainty wrote:

   The grounds aver that the judge erred at [23] in the finding that the ties were normal ties. There are insufficient reasons given and/or the finding is perverse because financial support has been accepted and in effect, at [17] also emotional support and/or the test has been misapplied. Further there were no

reasons given for failing to take account of the Appellant's private life with family members. The second ground takes issue with the proportionality assessment. Firstly if the judge was wrong on family life then that infects the proportionality assessment/the finding at para 31. The judge was wrong to impose an exceptionality test at [35]. Further the judge erred by failing to take account of the matters at 2(iv) of the grounds.

As to ground 1 it is arguable that at [23] (and the following paragraphs) no or insufficient reasons were given for the finding of normal emotional ties. It is arguable that this error then infects the proportionality balance. There are arguable errors of law in grounds 1 and 2.

3. In his oral submissions, Mr Winter, who appeared for the appellant, argued that the judge had failed to give sufficient reasons for concluding that the ties between the appellant and his family members were 'normal' rather than unusually close. Having extensively set out the relevant jurisprudence at [22], the judge wrote at [23] writes:

23. The evidence before me is evidence of the normal emotional ties between a father entering his 70s and his adult son. Although the appellant's grandchildren were mentioned in oral evidence, there is no reliable evidence of the nature and degree of the relationship between the appellant and his grandchildren. In his witness statement the appellant does not mention his grandchildren, nor his daughter-in-law. The appellant's son does not say anything about his children and nothing about the relationship between the appellant and his grandchildren.

4. The grounds of appeal [1.1] assert:

The FTT accepts at paragraph 25 that the appellant's son sent money to the appellant when the appellant was in Pakistan and that money was for medication, care and treatment. The FTT, at paragraph 17, does not dispute what Dr Husein says in that extract cited by the FTT. Namely that the withdrawal of family support is likely to cause a deterioration in the appellant's mental health. That is evidence of emotional support (see also pages 50-57 of the stitch bundle as well). There is no dispute that the appellant's son is responsible for the appellant's diabetic monitoring (page 66 of the stitch bundle). In light of the evidence the informed reader is left in real and substantial doubt as to why the evidence is only of normal emotional ties or where the FTT has misapplied the test. *Separatim* the FTT's decision that there are only normal emotional ties between the appellant and his son is irrational in light of the evidence and on the correct application of whether the support being provided is real, committed or effective (Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31 at paragraph 17; Rai v Entry Clearance Officer [2017] EWCA Civ 320 at paragraph 28; Uddin v Secretary of State for the Home Department [2020] 1 WLR 1562 at paragraph 40(i)). In light of the errors identified the findings at paragraphs 26 and 28 are vitiated.

5. In my opinion, the judge did not fall into error. As the judge properly observed [22] as regards the existence of family life between adult family members, 'it all depended on the facts'. It was for the judge, having found those facts, to decide whether it had been established to the required standard of proof that the relationships between the adults in this appeal went beyond what amounts to 'normal' relations and may

properly be described as exceptional. The judge was fully aware of the financial support of the appellant by his adult son and of the son's support for his father with regards his medical treatment. The judge found that those factors were indicative of a 'normal' relationship between an ageing father and his supportive adult son. It is difficult to know what other reasons the judge could or should have provided to support that conclusion. Ultimately, it was for the judge to decide on the facts whether the relationship was or was not exceptional. Had the facts indicated (i) beyond any rational doubt that there existed an exceptional relationship or had (ii) the judge failed to take into account all relevant evidence, then he may have erred in law. However, it cannot be legitimately claimed that the particular facts in this appeal indicate anything exceptional about the relationship or the extent of financial or emotional dependency of father on son whilst the judge's analysis of the all the evidence has been unarguably thorough. In my opinion, the assertion in the grounds of appeal that the judge's conclusion 'is irrational in light of the evidence and on the correct application of whether the support being provided is real, committed or effective' fails entirely to surmount the very high threshold of irrationality. Having failed to demonstrate irrationality on the part of the judge, Ground 1 amounts to no more than a disagreement with the judge's findings. It does not establish any error of law.

6. There is also no error of law as regards private life. There appellant's case before the First-tier Tribunal was advanced on the basis of the existence of family life; the grounds fail to give any reasons to show how, having failed to establish family life which should attract the protection of Article 8 ECHR, the appellant might be able to succeed on the basis of private life alone. Ground 2 stands or falls upon the success or failure of Ground 1.

7. In the circumstances, the appellant's appeal is dismissed.

Notice of Decision

The appeal is dismissed

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 5 NOVEMBER 2024