Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/28164/2012
IA/28165/2012

THE IMMIGRATION ACTS

Heard at : Field House	**Determination Promulgated**
On : 26th June 2013	**On : 1st July 2013**

Before

Upper Tribunal Judge McKee

Between

MUHAMMAD SALEEM AKHTAR
ZAKIA SALEEM

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Michael Harris, instructed by Farani Javid Taylor Solicitors
For the Respondent: Miss Emily Martin of the Specialist Appeals Team

DETERMINATION AND REASONS

1. The appellants, Mr Muhammad and Mrs Zakia, are nationals of Pakistan, born respectively on 1st September 1944 and 22nd October 1951. In June 2011 they

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applied for visas to visit their son, Muhammad Kashif, a taxi driver in Northampton, as well as another son, Muhammad Farrukh, who was a student, also living in Northampton. The appellants' remaining son, Farhan, was still living with them in Islamabad, but his wife, Saiqa Jabeen, was now over here as a student, again in Northampton. Mr Muhammad is a retired civil servant, and in his Visa Application Form he said that his pension yielded Rs 18,817/- per month, and was going up very shortly (from 1st July 2011) to Rs 21,640/-. His son who was living there, Farhan, would provide sums of Rs 20,000/- to 25,000/-, "*as per need*." As well as this income, Rs 10,00,000/- were available in a joint account with NIB Bank. According to a check run by the High Commission in Islamabad, Mr Muhammad's bank statements showed his monthly pension of Rs 18,000/- going in, while bank statements from Farhan showed Rs 16,00,000/- in total (presumably the joint bank account with Rs 10,00,000/- was part of that). The ECO also noted previous visits by the appellants to the UK, in 2000 and 2006, from which they had returned to Pakistan. Unsurprisingly in those circumstances, visas were issued at the end of June 2011.

2. Although it was intimated on the Visa Application Form that a visit of 30 days was intended, leave to enter was granted, in the usual way, for six months. Just before the six months expired in February 2012, Mr Muhammad and Mrs Zakia applied for indefinite leave to remain as the dependants of their son, Kashif, who had sponsored their visit. According to Mr Muhammad, his daughter contacted him from Pakistan a couple of weeks after his arrival here to say that she had found a letter at the house where the appellants had been living since 1984. This accommodation was owned by the Government, and the letter was to inform the occupants that they were no longer entitled to live there, and would have to move out. Their daughter arranged for all their belongings to be put into storage, and they now had no home to return to in Pakistan.

3. In their letter of 10th February 2012, enclosing the applications for indefinite leave, Farani Taylor Solicitors say that the applicants' son Farhan, who was living with them in Pakistan, has come to join his wife in the United Kingdom, with the result that there is nobody left in Pakistan to look after them. Their two married daughters cannot be expected to do so, but Mr Muhammad has diabetes and a heart condition, needing bypass surgery in 2007, while Mrs Zakia suffers from arthritis.

4. The applications were not decided until 8th November 2012, and were refused under paragraph 319 of the Immigration Rules. The decision-maker also traversed the new rules inserted on 9th July 2012 as paragraph 276ADE and Appendix FM. This was both unnecessary and wrong. Part 8 of HC 395 continued to govern these applications, as preserved by paragraph A280(c)(i). The applications were also refused under Article 8 of the ECHR, and two 'immigration decisions' were made in consequence : refusal to vary the applicants' leave, and removal to Pakistan. The validity of the latter decision was not put in issue in the grounds of appeal to the First-tier Tribunal, nor was it raised before Judge Graham or, indeed, before me. I only noticed the omission after the hearing at Field House.

5. The refusal to vary the appellants' leave is not an invalid decision, so the dismissal of the appeals by Judge Graham should be taken to be the appeals against that refusal: see *Adamally & Jaferi* [2012] UKUT 414 (IAC). When the appeals came before

Judge Graham on 12th March 2013, she heard evidence from Mr Muhammad and his son, Kashif, but not from Farhan. There was also a certificate from the NIB Bank dated 7th March 2013, showing that the credit balance in the joint account had dropped from Rs 10,00,000/- to below Rs 10,000/-. Judge Graham's reasons for dismissing the appeals were challenged in grounds settled by Mr Harris, which were said by Designated Judge Lewis, who granted permission to appeal to the Upper Tribunal, to "*occupy that intermediate legal territory between findings which were or were not reasonably open to the judge from the evidence*." Those grounds were developed very ably by Mr Harris when the appeals came before me today, and were stoutly rebutted by Miss Martin. My conclusion, despite Mr Harris' persuasive submissions, is that the judge's findings certainly were open to her on the evidence before her, and for the reasons she gave.

6. In-country appeals under paragraph 317 of the Immigration Rules require the application of a 'notional dependency' test. Would the appellants be wholly or mainly dependent upon the sponsor if they were back in their own country at the date of the hearing? What is fatal to these appeals is that Mr Muhammad's pension of Rs 21,640/- has been piling up every month in his bank account in Pakistan, and he has not drawn on it since February 2012. Mr Muhammad failed to produce any up-to-date statement of the account into which his pension is paid, and professed ignorance of the amount it contains. The judge was fully entitled to infer from this reticence that the appellants are not mainly dependent financially on their sponsor in the United Kingdom. Their living costs each month were put at Rs 25,000/- in the Visa Application Form, most of which could be met by the pension.

7. Mr Harris protests that corroboration is not needed in this jurisdiction. That would be true of, say, an asylum seeker, who cannot ask the authorities of his country to provide evidence that they have been persecuting him. But it is not unreasonable to expect an educated person who has a bank account to provide statements of that account when his financial means are at issue. Miss Martin cites *TK (Burundi)* [2009] EWCA Civ 40 as authority for the proposition that the absence of independent supporting evidence, which is readily available, can play a part in determining overall credibility where no credible explanation is provided for its absence.

8. Mr Harris argues that, while Rs 25,000/- might have been enough to cover the appellants' living costs two years ago, when they applied for entry clearance, it was no longer enough by the time their appeals came before the First-tier Tribunal. Both of them were suffering from medical conditions, for which the medication, treatment and care would be much more costly on return. But there was no proper medical report before Judge Graham to support such an assertion. The letters from Dr Tariq Muhammad and Dr Shajee Siddiqui refer vaguely to "*continuous medical care*" and "*constant personal attention and care*", without condescending to any particulars. Judge Graham notes that Mr Muhammad has type 2 diabetes and ischaemic heart disease, while Mrs Zakia has arthritis in both knees. But they had these conditions long before they came to the United Kingdom in August 2011. Mr Muhammad had a coronary bypass in 2007. Farhan Saleem gave no evidence as to the care, if any, which he provided to the appellants while he was living with them. There was no proper evidence of any personal care needed by the appellants now, which could not be provided in Pakistan. As Judge Graham observes, there was no suggestion that the appellants' medical problems had worsened in the UK. There are some

prescriptions written for Mr Muhammad in Northampton, but there is no evidence that this medicine will not be available in Pakistan, or that its cost will be prohibitive.

9. A much greater expense even than the medication, insists Mr Harris, will be the cost of alternative accommodation for the appellants, now that they have lost their home in Pakistan. Judge Graham, however, did not believe that they had lost it, and gave cogent reasons for her disbelief. It was an unlikely coincidence that the Government would have acted so promptly in repossessing the appellants' house, just after they had gone on holiday to the UK. Also unlikely was the supine acceptance of the loss by Mr Muhammad, when by his own account he had fought tooth and nail in the past to retain possession. He had taken the matter to court, he had enlisted the support of the Minister of the Interior, whose assistant private secretary he had been, and his case had gone all the way up to the Federal Minister for Housing, who had let him keep the accommodation although he was no longer working for the government. As Judge Graham observes, even though Mr Muhammad was in this country when the purported repossession of his house occurred, he could have asked his previous helpers to intervene, or instructed lawyers to take up his case. Most tellingly, as Judge Graham observes, the letter informing the appellants that they must leave their house in Islamabad was allegedly read out to them over the telephone by their daughter, but has not been produced. Nor is there any documentary evidence that the appellants' household goods are in storage. The principle enunciated in *TK (Burundi)* is again of obvious relevance.

10. Judge Graham formed an adverse view of the appellants' credibility, noting their failure to mention in their visa applications that Farhan would be travelling with them to the UK, and staying for a much longer period that one month. Their failure to produce documentary evidence which should have been readily available added to this unfavourable impression. In those circumstances, the appellants could not make out a strong Article 8 claim. Besides, as the judge also observed, Farhan's wife's leave to enter as a student had been due to end in February 2013, and her application for further leave had not yet been decided. Even if further leave as a student was granted, it was still in a temporary category, such that both Saiqa Jabeen and Farhan Saleem could be expected to rejoin the appellants in Pakistan in due course, and resume family life ties there.

11. In fine, there is no error of law in the First-tier determination, save for the failure to realise that the decision to remove the appellants under section 47 of the Immigration, Asylum and Nationality Act 2006 was unlawful, having been conveyed in the same notice as the refusal to vary the appellants' leave : see now *Ahmadi* [2013] EWCA Civ 512. Section 47 has recently been substituted so as to allow such decisions to be made in tandem, but that does not affect the illegality of the removal decisions made in November 2012. In respect of that matter only, I remake the decisions on these appeals. Mr Harris has drawn attention to the fact that Mrs Zakia has recently been diagnosed with breast cancer. That is something which her representatives may wish to pursue with the Secretary of State, before any further 'immigration decision' is taken in her case.

DECISION

The appeals are allowed to the limited extent that the decisions to remove the appellants are unlawful. Otherwise the appeals are dismissed.

Richard McKee
Judge of the Upper Tribunal

29th June 2013