



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

Appeal Number: IA/02148/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 January 2014**

**Determination  
Promulgated  
On 16 January 2014**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN  
DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MS F Q  
(Anonymity direction made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Iqbal of counsel instructed by Lincolns solicitors

For the Respondent: Mr J Parkinson a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. This is the determination of the Tribunal. It follows an earlier hearing before one of us, Judge Moulden, on 24 October 2013 when the decision of First-Tier Tribunal Judge Blandy (the FTTJ) was set aside because of errors of law. The Decision and Reasons issued following that hearing is set out in the Appendix to this determination and

could usefully be read first as it sets the scene and explains the reasons for setting aside the decision of the FTTJ.

2. The appeal comes back before us in order to remake the decision on the appeal against the respondent's decision of 8 January 2013 to refuse to grant the appellant leave to remain in the UK as the mother of her son and sponsor Mr Q under the provisions of paragraph 317 of the Immigration Rules and on human rights grounds.
3. A direction was given at the last hearing that the appellant's representatives should lodge with the Upper Tribunal and serve on the respondent no later than 1 November 2013 an indexed and paginated consolidated bundle containing all the documents on which the appellant relied, including witness statements. This bundle was sent to the Upper Tribunal but unfortunately does not appear to have reached the respondent. In the circumstances Mr Parkinson was provided with a copy and given time to consider this and prepare, which he told us was sufficient.
4. We heard oral evidence from the appellant through an Urdu speaking interpreter and from the sponsor and his wife neither of whom needed an interpreter. The sponsor is the appellant's younger son. The elder son was present at the hearing but did not give evidence. The appellant also has a daughter who is living in the USA. The witnesses were examined in chief and cross-examined. We asked some questions for the purpose of clarification. Their evidence is set out in our record of proceedings.
5. Mr Parkinson submitted that there were two main issues. The first was whether the appellant would, if she returned to Pakistan, be living in the most exceptional compassionate circumstances. He emphasised that this was a high threshold. He submitted that there had been "some degree of gloss" on the evidence submitted on the appellant's behalf. In reply to our question he said that he was not suggesting that any of the witnesses were not credible. On the appellant's behalf it was argued that she was vulnerable and could not cope on her own. She tended to forget to take her medication. Against this he submitted that her life history demonstrated considerable fortitude. She had a severe motor accident and nearly died. Soon after her husband died young from a heart attack. At this stage her youngest child was 10 and the eldest 17. She had no other male support. She suffered from depression but fought this, moved back to Rawalpindi and brought up her children with some help from her mother. She had to take on her brothers-in-law in order to achieve the sale of the property which they had co-owned with her late husband. The evidence did not indicate that she was any more depressed in 2012 than she was in 2007.
6. Mr Parkinson submitted that the psychiatric evidence contained a gross overstatement of what had happened to her. The family plan

was that the appellant would use her multiple entry visa to come to this country for periods of less than six months, leave the country for a month or so and then return for another period of less than six months and so on until she was 65 when it would be easier to obtain settlement. He did not suggest that she was not entitled to do this or that it was abusing the immigration system. The appellant was a woman who had had difficulties and problems but had overcome them. She still had a house in Pakistan and could live there and afford to employ a servant. The affidavits submitted by her brothers were not a true reflection of the position in Rawalpindi. The appellant could afford to visit this country and have her family visit her in Pakistan. Indeed, she could go on using her multiple entry visa as she had in the past. In short, she would be able to cope.

7. Mr Parkinson accepted that the appeal against the S47 removal decision should be allowed.
8. In relation to the Article 8 grounds Mr Parkinson accepted that the appellant had established a family life with her son and daughter-in-law and grandson in this country. He submitted that there were no compelling reasons for the appellant to remain in this country where she did not have settled status. He relied on the judgement of the Court of Appeal in MF (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 1192.
9. Mr Parkinson argued that, in comparison to her family life, the appellant had only a minimal private life here. We were asked to dismiss the appeal.
10. Ms Iqbal relied on her skeleton argument. Until they obtained legal advice the appellant and her family were not aware that paragraph 317 of the Immigration Rules might assist her before she was 65. We were asked to find that all the witnesses were credible. We asked Ms Iqbal to assist us on the question of whether, if we accepted that the sponsor intended to return to Pakistan to live there and look after his mother, as he said he would, she could be "living alone outside the United Kingdom" or "in the most exceptional compassionate circumstances". She submitted that we should look at her evidence in the light of the circumstances of the whole family and that it would be unreasonable to expect the sponsor to break up his own family in order to return to Pakistan to look after his mother. We should treat the best interests of the appellant's grandchild as a primary consideration.
11. Ms Iqbal asked us to look at the medical reports in the round with the rest of the evidence. None of the witnesses had sought to exaggerate in any way. She submitted that the appellant had shown that she met the requirements of paragraph 317 including the most exceptional compassionate circumstances. Furthermore, she was entitled to succeed on both Article 3 and 8 human rights grounds; the former in relation to her mental health. The psychiatric evidence

was that her condition would deteriorate if she had to return. We reserved our determination.

12. In the reasons for refusal letter dated 8 January 2013 the respondent did not call into question the appellant's credibility. In his submissions Mr Parkinson did not suggest that any of the witnesses were not credible, although he criticised the psychiatric evidence. His submissions went no further than saying that there had been "some degree of gloss" on the evidence submitted on the appellant's behalf. Whilst we accept that the evidence puts the appellant's case at its highest and in the best light that is not a criticism. We find the appellant, the sponsor and his wife to be credible witnesses. We were particularly impressed by the evidence of the sponsor.
13. We make the following findings. The appellant is a citizen of Pakistan who was born on 1 April 1953. She is living in this country with her younger son, daughter-in-law and four-year-old grandchild. She has three children; two sons and a daughter. Her younger son is her sponsor. Both sons are now living in this country. Her married daughter is living in the USA, has two children and a full-time job as a pathologist. She has two brothers living in Pakistan.
14. The appellant was involved in a car crash in 1986 breaking her left leg and suffering severe facial and head injuries. She suffers from osteoarthritis in both knees, had a hysterectomy in 2006 and has suffered from depression for many years for which she has been prescribed medication. We will need to return to the question of the psychiatric evidence. Her husband died of a heart attack in 1984 after which she brought up her children with some help from her mother. Whilst she inherited a small proportion of her late husband's estate with a greater proportion going to her children she had to fight to achieve the sale of a property jointly owned by her late husband and his brothers in order to obtain his share of the proceeds of sale. This has resulted in some degree of continuing enmity with her husband's family. The appellant and her children lived on the income from the inheritance until her elder son started work in 1992.
15. The appellant came to the UK in 2007 with the sponsor. She had a multiple entry visit visa and was at pains to ensure that she complied with the terms of this by staying for periods of less than six months on each occasion before leaving the country for periods of approximately a month to go either to Pakistan or the USA. She has never overstayed. Since 2007 she has visited Pakistan on two occasions to visit her elder son. Since 2010, when her elder son left Pakistan, she has visited Pakistan on one occasion, accompanying her sponsor and his family for a two-week visit. At all times she has lived with one or more of her children. She is socially and emotionally dependent on her children, particularly the sponsor and his wife with whom she is now living. Occasionally the appellant

goes to stay with her elder son and his family who are living near Manchester.

16. The appellant still owns the family house in Rawalpindi and has savings amounting to 4 lac rupees. Whilst living there she had a servant and some emotional support from her mother. Her elder son paid her private medical expenses. The sponsor lived with her until he came to the UK in 2007 and she accompanied him. Until he left Pakistan in 2010 her elder son lived just across the street. He is now settled in the UK and will become eligible for indefinite leave to remain in 2015. He is a Pharmaceutical Manager, married with three children in full-time education. The appellant has no pension and is supported by her children and accommodated by the sponsor and his wife in their home. She has two brothers both living in Pakistan. She has not spoken to them for a long time and before that only saw them occasionally on religious festivals or family occasions. They are elderly and not in the best of health. One brother lives with his son and his family and is financially dependent on the son. The other brother is a retired government officer with a small pension and has a family of four who depend on him. We accept that neither brother could accommodate or support the appellant emotionally or financially. Whilst the appellant was living in Rawalpindi thieves came to the house on two occasions. She is now frightened to go back there.
17. The sponsor is a full-time surgical registrar working for a NHS hospital trust. He is a British citizen who has been working in this country since he came here in 2007. His wife and four-year-old son are both British citizens. His evidence confirms the evidence of the appellant which we have set out. She has been living with him, his wife and son since they both came to this country in 2007. The appellant has never lived alone in Pakistan without one of her children in her home or across the street.
18. The sponsor's wife, born in 1977, is a British citizen who has been living and working in the UK since 2004. She married the sponsor in 2007 and their son is nearly 5. Theirs was a "love match" not an arranged marriage. Her husband came to live in the UK bringing his mother with him because she was not prepared to go and live in Pakistan. She works part-time in the NHS as a specialist child and adolescent psychiatrist. Her working hours and the proximity of her workplace are designed to help her to look after both her son and the appellant. Her evidence, which we accept, is that she is not prepared to move back to Pakistan. She is settled and has a good and rewarding job here. She does not believe that similar work would be available in Pakistan. She fears that if she returns to Pakistan she and her husband would be perceived as professionally qualified and wealthy individuals returning from the UK and that they and their son would be at risk of kidnapping. Their son has always lived with his grandmother and is emotionally attached to her. The sponsor's wife has tried to break it to him that his

grandmother may have to return to Pakistan, as a result of which he has become upset, stopped eating properly and developed severe iron deficiency anaemia. There is medical evidence confirming this.

19. The evidence from the sponsor and his wife, borne out by medical reports, shows that his efforts to ensure that his mother can continue to live with them and not have to return to Pakistan and the failure of those efforts so far has resulted in a severe depressive episode and anxiety and panic attacks. These are having an adverse effect on his wife and son. There was a period during which he was unable to go to work. He is on antidepressants. The decision has been taken that he should stop performing operations for the time being although he continues part-time with other medical duties.
20. There are two psychiatric reports from a consultant psychiatrist, Dr Edgar dated 21 June and 23 August 2013. He saw the appellant for two assessments each lasting approximately 90 minutes. On the first occasion she was accompanied by her daughter-in-law and on the second by her son and daughter-in-law. In his first report Dr Edgar recorded that; "shortly before coming to the UK (the appellant) was subjected to 2 armed robberies in her home within a 12 month period and on both occasions she was physically assaulted by the assailants. She was quite badly bruised and beaten, although fortunately did not need to be hospitalised for her physical injuries." This was said to conflict with the more detailed evidence given at the hearing before the FTTJ where the appellant said that in one incident the car was stolen from the forecourt of her home and she did not see the perpetrators; on the other there was a robbery and she was threatened with violence if she did not hand over money or valuables but there was no physical assault. In his second report Dr Edgar put this down to the failure of the appellant to make a clear distinction between the circumstances of the two events during his first interview with her. We prefer the oral evidence given by the appellant which in any event indicates less serious events.
21. Dr Edgar states that the appellant is on antidepressant and anxiety medication, medication to help her sleep, anti-inflammatory medication for arthritis and a drug to protect her stomach against the effect of the anti-inflammatory medication. She has a long history of depressive disorder of at least moderate severity with significant generalised anxiety symptoms. She has residual symptoms of PTSD arising from the robberies which took place in about 2005. If she has to return to Pakistan there is a high likelihood that her depressive symptoms will worsen and she will struggle to cope. If she has to return there is "even a possible suicide risk". Dr Edgar says that the appellant admitted to "fleeting thoughts of suicide" although she has made no active attempts or plans. The second report states that since the failure of her appeal heard by the FTTJ the appellant's depressive and generalised anxiety disorders are now of high severity.

22. In their most recent evidence, given at the hearing before us, nothing was said by the appellant, her son or daughter-in-law about the risk of suicide. In the absence of any attempts, plans or continuing suicidal ideation we find that the appellant has not established that there is now a real risk of suicide.

23. Paragraph 317 of the Immigration Rules provides;

"317. The requirements to be met by a person seeking indefinite leave to enter or remain in the United Kingdom as the parent, grandparent or other dependent relative of a person present and settled in the United Kingdom are that the person:

(i) is related to a person present and settled in the United Kingdom in one of the following ways:

(a) parent or grandparent who is divorced, widowed, single or separated aged 65 years or over; or

(b) parents or grandparents travelling together of whom at least one is aged 65 or over; or

(c) a parent or grandparent aged 65 or over who has entered into a second relationship of marriage or civil partnership but cannot look to the spouse, civil partner or children of that second relationship for financial support; and where the person settled in the United Kingdom is able and willing to maintain the parent or grandparent and any spouse or civil partner or child of the second relationship who would be admissible as a dependant; or

(d) parent or grandparent under the age of 65 if living alone outside the United Kingdom in the most exceptional compassionate circumstances; or

(e) parents or grandparents travelling together who are both under the age of 65 if living in the most exceptional compassionate circumstances; or

(f) the son, daughter, sister, brother, uncle or aunt over the age of 18 if living alone outside the United Kingdom in the most exceptional compassionate circumstances; and

(ii) is joining or accompanying a person who is present and settled in the United Kingdom or who is on the same occasion being admitted for settlement; and

(iii) is financially wholly or mainly dependent on the relative present and settled in the United Kingdom; and

(iv) can, and will, be accommodated adequately, together with any dependants, without recourse to public funds, in

accommodation which the sponsor owns or occupies exclusively;  
and

(iva) can, and will, be maintained adequately, together with any dependants, without recourse to public funds; and

(v) has no other close relatives in his own country to whom he could turn for financial support; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity; and

(vii) does not fall for refusal under the general grounds for refusal.

24. Mr Parkinson accepts that the only requirement in issue is whether the appellant would be "living alone outside the United Kingdom in the most exceptional compassionate circumstances". All the other requirements are met.

25. This is a case where the appellant is not living outside the UK. She is not making an entry clearance application from Pakistan but an application for leave to remain from within the UK. In these circumstances MB (para 317: in country applications) Bangladesh [2006] UKAIT 00091 makes it clear "that, in applying paragraph 317 to applications for leave to remain, the question is not what the position was before the applicant left her home country. But nor is it simply what the applicant's position is now, whilst she is in the United Kingdom. The correct question is what the applicant's position would be if, instead of being in the United Kingdom, she were in her own country." (Paragraph 9)

26. We take into account all our findings of fact in assessing whether the appellant has established that she would be living alone outside the United Kingdom in the most exceptional compassionate circumstances if she was now in Pakistan. It is for her to establish this to the standard of the balance of probabilities.

27. We look at all the evidence in the round. The appellant cannot be considered in isolation from her family. She still owns the former family home in Pakistan and could live there. She would be able to afford the help of a servant, as in the past. Having a domestic servant does not mean that she cannot be considered to be living alone. We have no doubt that she would receive adequate financial support from her children. She would be able to afford medical treatment. There is a continuing rift with her late husband's family and she would have no support from them. Her elderly brothers have families of their own and would not provide her with significant help or support.



28. Since they were born the appellant has never lived without all or at least one of her children in the same house or nearby. Mr Parkinson was right to describe her as having shown great fortitude, recovering from very serious injuries suffered in a road crash, losing her husband at an early age, bringing up her children almost entirely on her own and fighting for their inheritance in order to support them. It is clear that they are a close and devoted family. Cultural imperatives mean that it is expected that one of her sons should accommodate and look after her. We find that the history and circumstances of this family mean that the sponsor is driven by the strongest of obligations to look after his mother. We believe him when he says that if his mother has to return to Pakistan he will go with her to live with and look after her. We also believe his wife who, whilst she appears to accept the imperative which drives her husband, is not prepared to leave this country for reasons which she genuinely believes and are reasonably held not just for herself but for her son. If the sponsor does what he considers to be the right thing then he will break up his family with inevitable adverse consequences for the three of them. He has a career here in a caring profession, as does his wife. The sponsor has suffered serious health problems as a result of the worries over his mother's application and appeal and there must be increased concerns for his health if he gives up his job and leaves the country to look after his mother. We do not consider that it is reasonable to expect him to return to Pakistan to look after his mother. It would not be reasonable to expect his elder brother or his sister to uproot in order to return to Pakistan to look after their mother.
29. Mr Parkinson submitted that the appellant was a woman who had had difficulties and problems but had overcome them. We agree, but it does not necessarily follow that she would now be able to cope. She is older and her health has deteriorated. She has grown accustomed to the help and support of her son and daughter-in-law. She suffers from depressive and generalised anxiety disorders which are now of high severity. They have deteriorated because of the failure of her application and first appeal. She needs emotional support and reminding to take her medication. However, we have concluded that she has not established that there is a real risk of suicide.
30. The appellant and her grandson are close. It is not surprising that against the background of her profession his mother has tried to prepare him for the possibility of his grandmother having to leave. This has had an adverse effect on his health.
31. We find that it is not reasonable to expect the sponsor to break up his family in order to go and live with the appellant in Pakistan. We are conscious that "the most exceptional compassionate circumstances" has a high but not insurmountable threshold. We conclude that the appellant has established that if she had to return

to Pakistan she would be living alone outside the United Kingdom in the most exceptional compassionate circumstances.

32. In these circumstances it is not necessary for us to decide whether to allow the appeal on Article 8 human rights grounds. Had it been necessary to do so we would have allowed the appeal mostly on the basis of family life combined, to a lesser extent, with her private life. The respondent would not be able to show that removal of the appellant would be a proportionate interference with her private life, her family life and the family lives of her son, daughter-in-law and grandson, particularly bearing in mind and treating as a primary consideration the best interests of her grandson.
33. We find that the appellant's mental ill-health has not and would not if she had to return to Pakistan reach a level of severity which would engage her Article 3 human rights taking into account the medical treatment she could obtain there.
34. We have not been asked to make an anonymity direction but consider that we should do so. Identifying the appellant could result in identification of her son, daughter-in-law or grandson. Their professions and his age would make this undesirable.
35. We make an order under rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant or any member of her family.
36. The decision of the FTTJ J having been set aside we remake the decision and allow the appellant's appeal under the Immigration Rules. We also allow the appeal against the S47 directions under the Immigration, Asylum and Nationality Act 2006.

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Signed  
January 2014  
Upper Tribunal Judge Moulden

Date 11

## APPENDIX

1. The appellant is a citizen of Pakistan who was born on 1 April 1953. She has been given permission to appeal the determination of First-Tier Tribunal Judge Blandy (the FTTJ) who dismissed her appeal against the respondent's decision of 8 January 2013 to refuse to grant her leave to remain in the UK as the mother of her son and sponsor Mr Q under the provisions of paragraph 317 of the Immigration Rules.
2. The respondent did not accept that the appellant was a widow over the age of 65 years or that she would be living alone outside the UK in the most exceptional circumstances. The appellant had not claimed to be over the age of 65 years and the respondent misquoted the relevant provision which refers to "the most exceptional compassionate circumstances". The appellant appealed and the FTTJ heard her appeal on 26 June 2013. Both parties were represented and the FTTJ heard oral evidence from the appellant and the sponsor. He found that the appellant had established that she met all the requirements of paragraph 317 except for one. She had not shown that she was living outside the UK in the most exceptional compassionate circumstances. He dismissed the appeal under the Immigration Rules and on human rights grounds.
3. The appellant sought permission to appeal which was granted by a judge in the First-Tier Tribunal but not on all grounds. The appellant renewed her application to the Upper Tribunal, asking that she be permitted to argue all her grounds of appeal. This application was granted.

4. At the hearing before me Mr Tarlow conceded that there were errors of law and that the decision should be set aside. I agree. There was a psychiatric report before the FTTJ prepared by Dr Edgar giving his opinion that the appellant suffered from severe depression and PTSD and that there was a risk that she would attempt suicide if forced to leave her family in the UK. It said that she had been taking antidepressants. The FTTJ said that the account of crimes committed in Pakistan affecting the appellant had been grossly exaggerated and that in the circumstances he was "unable to place no significant weight upon the report of Dr Edgar (sic)". He must have meant that he was unable to place any significant weight on the report. In the report Dr Edgar recorded that; "shortly before coming to the UK (the appellant) was subjected to 2 armed robberies in her home within a 12 month period and on both occasions she was physically assaulted by the assailants. She was quite badly bruised and beaten, although fortunately did not need to be hospitalised for her physical injuries." This conflicted with the more detailed evidence given by the appellant at the hearing and two FIRs which said that in one incident the car was stolen from the forecourt of the appellant's home and she did not see the perpetrators, on the other there was a robbery and she was threatened if she did not hand over money or valuables but there was no physical assault. Clearly the FTTJ considered that the appellant had misinformed the consultant psychiatrist and grossly exaggerated what had happened. However, he does not appear to have considered other possibilities, for example whether there had been a misunderstanding in circumstances where her daughter-in-law had interpreted for the appellant. The point does not appear to have been put to the appellant or her representative. The Court of Appeal in Y (Sri Lanka) [2009] EWCA Civ 362 made it clear that where psychiatric findings were sought to be undermined by suggesting that an appellant had been exaggerating symptoms great care was required before modifying or even more radically discounting the expert witness evaluation. In this case the FTTJ found that the exaggeration was in the account of events not the symptoms but I consider that the same principles apply. In paragraph 24 of the determination the FTTJ rejected the expert opinion that the appellant was suffering from post-traumatic stress disorder or that there was any suicide risk. However, in paragraph 25 he accepted that she had been receiving medical treatment for depression for many years. I find that, in the light of Y (Sri Lanka) the FTTJ erred in his treatment of the expert report from Dr Edgar. Any inconsistencies in the evidence as to what happened during two incidents in Pakistan were not adequate reasons for the FTTJ appearing to accept that part of the report which said that the appellant was suffering from depression whilst rejecting the opinion that she was also suffering from PTSD and what was described as no more than "a possible suicide risk".
5. I also find that the judge erred in law because, in paragraph 26 when giving reasons for rejecting the expert evidence that there was a risk of suicide he said; "to do so would ignore the fact that when she reaches the age of 65 it is very likely that she will be able to once again join her sons in this country on a permanent basis". This statement gives the

clear impression that the judge believed that a future application by the appellant for settlement in the UK would be governed by paragraph 317 of the Immigration Rules. Had paragraph 317 continued in force it would have been easier for the appellant to qualify once she reached the age of 65 because there would no longer be the requirement to show the most exceptional compassionate circumstances. However, the basis of the FTTJ's statement was incorrect because, for applications made after 9 July 2012, paragraph 317 ceased to have effect and the appellant would have to meet the far more stringent requirements contained in paragraph FM EC-DR of the Immigration Rules.

6. I find that by reason of the matters set out above the determination contains material errors of law and the FTTJ's decision must be set aside and re-made.
7. Mr Zyed asked me to hear further oral evidence from the appellant and the sponsor. He produced two new witness statements which had not been submitted in advance of the hearing as required by the directions which had been given when permission to appeal was granted. Furthermore, the appellant required an interpreter and, although the same direction said that this should be done, there had been no request to provide one. Mr Tarlow indicated that if further evidence was given he would wish to cross examine the witnesses. I considered excluding the evidence and remaking the decision on submissions only but on balance concluded that the interests of justice would be best served if the appellant was allowed to call further oral evidence notwithstanding the failure of the representatives to comply with directions.