



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

IA/10493/2014

Appeal Number

THE IMMIGRATION ACTS

Heard at Sheldon court  
On 7<sup>th</sup> October 2014  
Prepared 8<sup>th</sup> October 2014

Determination Promulgated  
On 10<sup>th</sup> October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

H K  
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms E Norman (Counsel, instructed by Wildings Solicitors)  
For the Respondent: Mr N Smart (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on the 1<sup>st</sup> of January 1940 who entered the UK on a visit visa on the 29<sup>th</sup> of March 2013. Following her arrival it appears that her family became concerned about her medical condition and subsequently she was diagnosed with dementia (which form is not stated). Following that an application for leave to remain outside the Immigration Rules was made which was refused.
2. The Appellant's appeal was heard by Judge Flower at Sheldon Court on the 23<sup>rd</sup> of May 2014. In a determination promulgated on the 5<sup>th</sup> of June 2014 the appeal was allowed under article 8. The Secretary of State sought permission to appeal to the Upper Tribunal asserting that the Judge had failed to have regard to the provisions of Appendix FM when assessing article 8. Permission was granted by Judge Grant on the 21<sup>st</sup> of July 2014.
3. The determination contains no reference to the case of Haleemudeen or paragraph 400 of the Immigration Rules both of which require the assessment of article 8 claims to be made by reference to the Appendix FM and paragraph 276ADE of the Immigration Rules. In the

summary of evidence it appears that there was no evidence to show what medical care would be available in Pakistan or to show how that could or could not be accessed by the Appellant.

4. Those errors do not assist and the Judge should have made the article 8 assessment by reference to the Immigration Rules and explained why the result was unjustifiably harsh. However, for the reasons given below I am satisfied that had the Judge set out the reasons correctly the result obtained would have been the same and accordingly there is no material error in the determination.
5. The Judge summarised the medical evidence at paragraphs 21 and 22. It is clear from the evidence that was available that the Appellant's condition is significant and that she is unaware of her location, time and important personal events and that she is incapable of independent living requiring support for all her daily needs.
6. The unchallenged evidence is not only contained in the medical report but also in the evidence that she is without support in Pakistan. Given her state of health I do not see how she could be returned to Pakistan, she would be incapable of making her way out of the airport let alone to get home and then access whatever medical services may be available.
7. Whether predicated on the basis of her family life which is engaged or on her private life and her physical and moral integrity the Judge was entitled to find that her removal from the UK in her state of health would be disproportionate. Accordingly I am satisfied that the approach taken by the Judge, while erroneous, was not material to the decision and accordingly the determination stands.

## CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

### Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

### Fee Award

The Appellant has the benefit of a fee award from the First-tier Tribunal, as the determination is undisturbed there is no effect on the fee order made and the appeal to the Upper Tribunal was made by the Secretary of State and has been rejected.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 9<sup>th</sup> October 2014