



IAC-PE-SW-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**
IA/19311/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester
On 3rd November 2014**

**Decision & Reasons
Promulgated
On 21st November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MRS TASLEEM AKHTAR
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Patel, Counsel, instructed by Fawad Law Associates

For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Pakistan born on 14th August 1942. The Appellant entered the United Kingdom on 18th September 2013 on a valid visit visa. The Appellant has remained in the United Kingdom and has applied for indefinite leave to remain

- as a dependent relative. The Respondent refused the application on 3rd April 2014 and on the same day made a decision to remove the Appellant under Section 47 of the 2006 Act.
2. By a determination promulgated on 28th July 2014 First-tier Tribunal Judge McAll dismissed the Appellant's appeal.
 3. The grounds for seeking to appeal against that decision are based on the failure by the judge to disclose to the Appellant emails sent to the Tribunal. The full circumstances with regard to that are set out within paragraphs 5 to 7 of the determination.
 4. The Emails had been submitted to the Tribunal. Those emails appear to have been also in the possession of the Respondent. The Respondent indicated that no reliance was placed on those emails. Judge McAll determined that as there were no witnesses to the emails and as the truth or otherwise of the contents could not be ascertained he was not going to take the emails into account. However he determined not to disclose the emails or the identity of the author to the Appellant or to the Appellant's representative.
 5. It is the Appellant's case that that failure to disclose the emails results in an allegation that the Appellant cannot be certain that the information contained within such emails did not colour the judge's approach to the evidence. It is submitted that the proceedings were therefore procedurally unfair.
 6. At the hearing I asked the Appellant's representative to identify any finding of fact within the determination by the judge which was not soundly based upon the evidence that was available to both parties. The Grounds of Appeal do not challenge any of the factual basis for the judge's decision or allege that the contradictions and inconsistencies noted by the judge were not clear on the evidence available.
 7. The only challenge is the failure to disclose and identify the author of the emails and the suggestion that there is a suspicion that the judge may have taken into account such materials.
 8. Courts every day have to deal with evidence and have to determine whether or not evidence is admissible or inadmissible. Courts every day have to determine what if any evidence can be disclosed to the parties on public interest immunity applications. There are very frequently applications for non-disclosure of materials by third parties such as local

authorities in child care proceedings not wishing to disclose information to criminal courts or tribunals.

9. The present proceedings were governed by the Asylum and Immigration Tribunal (Procedure) Rules 2005. The 2005 Rules, Rule 43 specifically empowers the Tribunal to decide what procedure is to be followed in any appeal or application.
10. Rule 51 sub-paragraph 7 specifically states subject to Section 108 of the 2002 Act the Tribunal must not take account of any evidence that has not been made available to all the parties.
11. In dealing with the emails the judge has at paragraph 5 having set out the facts stated that he has not referred to the emails when considering the evidence and the emails as such form no part of any consideration of the evidence or findings. The judge goes on in paragraph 7 point out that further emails had been sent but that they also had been totally disregarded by him.
12. Detailed findings of fact have been made by the judge.
13. The judge firstly has dealt with the Appellant's medical condition. He noted that the documentation disclosed now proves that the Appellant had been receiving treatment not only for diabetes but for a heart condition for several years. When asked about it in the hearing the Appellant had indicated that her heart complaint had been diagnosed lately in the United Kingdom. She claimed that her medical condition had significantly deteriorated in the United Kingdom. However it was clear and evident that she had had the heart problems for at least five years in Pakistan and she had been receiving medical treatment for such in Pakistan. There was no evidence or at least no medical evidence of any deterioration in her medical condition.
14. The judge also assessed the fact that there was a medical note to indicate that the Appellant was planning to fly abroad accompanied by family members and that it was suggested she was not fit. However there was no evidence of her condition having deteriorated. Indeed the letter from the NHS in Stockport on 10th December indicated that whilst the Appellant had attended at the hospital no medicines had been dispensed at that stage. The suggestion therefore that it would be detrimental to the Appellant's health was therefore not made out and the judge was entitled to make that finding on the basis of the evidence.
15. The judge was also entitled to make the finding that, whilst the Appellant was seeking to suggest that her problems were of recent origin, such was not true as it was obvious that they had

existed for a long time. Indeed the Appellant appears to have been a diabetic for some twenty years and to have been receiving treatment for her diabetes in Pakistan throughout the whole of that period of time.

16. The judge was entitled on the basis of the evidence presented to conclude that there was no evidence that the Appellant's condition had deteriorated and no reason why the Appellant could not continue to rely upon the treatment previously available in Pakistan.
17. The judge then has considered the witnesses' evidence and the accounts given. The judge on a careful analysis of the accounts found again that the Appellant and the witnesses were not telling the truth. The Appellant had come to the United Kingdom and was fit enough to look after herself at that stage. However the witnesses and the Appellant sought to claim that she required assistance one of their number from the first two or three weeks after she arrived in the United Kingdom. However that as the judge noted was at least six to ten weeks before the Appellant and the witnesses claimed that her condition had deteriorated. Again the judge was satisfied that the witnesses were unreliable and was accordingly fabricating the evidence to fit the case being put on behalf of the Appellant.
18. It was also noted that despite the fact that the Appellant had been only a visitor in September 2013 the evidence, that had been disclosed, showed that the Appellant had been registered with a doctor in the United Kingdom since 2011. The judge was clearly mindful that the Appellant would not be entitled to be registered with a GP save and except in emergency situations. That does not appear to have been the case. She was registered with the medical practitioners and had a UK NHS number. Given that the Appellant was a visitor until 2013 at the earliest she would not have been entitled to an NHS number in 2011.
19. The judge found on the evidence presented that as of the date of the hearing that the Appellant was not in such condition as she could not return to Pakistan because of medical problems and was satisfied that she could resume her life there.
20. There had been a claim that the Appellant had no family to return to in Pakistan. However again the judge has carefully examined the evidence presented. The judge found that at least one of the Appellant's sons, a Mr Mozzam Hussain, was in Pakistan at the time that the application was made. That information has come from documentation submitted on behalf of the Appellant. That was directly contradictory to the

evidence given by the Appellant and other witnesses, who was seeking to suggest that there was no warning Pakistan to look after her. The judge was satisfied that the family knew that one member of the family at least was still in Pakistan.

21. The judge has gone on to make specific findings that the Appellant's evidence was not reliable with regard to aspects of her case including whether or not she had individuals in Pakistan upon whom she could rely for support and assistance.
22. With regard to financial support the judge has again gone on to refer to the Visa Application Form wherein the Appellant has stated that she receives income from various sources from savings, from properties and other sources rental income, as well as money from her children and friends. The Appellant had stated in her application that she received monies from agricultural land. The judge was satisfied therefore that the suggestion that the Appellant was totally dependent upon family members in the United Kingdom was not true.
23. The Appellant had stated that her deceased husband had been a farm labourer and that appears to have been confirmed by at least one of the Appellant's witnesses. However when Mr Hussain came to give evidence he clearly explained that the father had been a farmer owning lands and that those estates had been sold and divided up between the children. The judge was satisfied that that was the true picture and that the Appellant and one of her witnesses was clearly seeking to give a totally false picture of the Appellant's circumstances and finances. The judge was therefore satisfied that the Appellant's credibility with regard to the financial circumstances could not be accepted. The judge did not accept that the Appellant was financially dependent upon her children in the United Kingdom.
24. The judge has gone on to make specific findings that there were other family members living in Pakistan including family members of Mozzam Hussain and younger siblings of the Appellant. In those circumstances the judge concluded accordingly that the Appellant did not meet the requirements of paragraph 277C or 276ADE or EX.1 or any of the requirements of Appendix FM.
25. In a very detailed and careful determination the judge has pointed out the inconsistencies and contradictions within the evidence. The judge has based his decision solely upon the evidence that was presented and has given valid reasons for coming to the conclusions that he did. The judge has clearly stated that he has not taken any account of the e-mails and that they form no part of the determination. There was no evidence of any materials within the e-mails being used either

by the judge in the determination or by the Respondent in questioning. All the materials upon which the contradictions and inconsistencies had been found were from evidence and documents that had been provided to the Appellant and to the Appellant's representative.

26. As a general point I would note that frequently letters, e-mails or other information are received in forced marriage situations, potentially from females being forced into marriage. To deal with such situations is never easy and it may require a reference by the Home Office to the Forced Marriage Unit. It is clear that the provisions of the rules had been put in place to enable the Tribunal to control the procedure and determine what evidence should be disclosed to the parties. Provided that the judge has not relied upon undisclosed evidence in coming to a conclusion in a case, the rules permit a judge to determine the procedure to be followed. There may be good reason not to disclose the identity of a third party. Provided the judge has not relied upon the evidence the judge can determine that it is appropriate not to disclose the evidence or the identity of the author
27. Taking the contradictions in the evidence and the inconsistencies I am satisfied that no judge could have come to any other conclusion than the Appellant and some of her witnesses were seeking to give a wholly false picture of the Appellant's circumstances. In the light of that there was only one conclusion that could be reached in respect of this appeal.
28. I find that there is no material error in law in the way that the judge dealt with the appeal. Accordingly the decision to dismiss this matter on all grounds stands.
29. No anonymity direction made.

Signed
2014

Date **20th November**

Deputy Upper Tribunal Judge McClure