



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/25436/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 12th March 2014

Determination Promulgated
On 04th April 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between

MRS NOSHA BI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Holt
For the Respondent: Mrs R Pettersen, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is a review of an appeal against the Respondent's decision made on 3rd July 2013 to refuse the Appellant's application to vary her leave to remain in the United Kingdom as the dependant relative of her second cousin Mohammed Jahangir Khan. It was accepted at the appeal hearing before the First-tier Tribunal, that the Appellant's claim could not meet the Immigration Rules, but in essence was a claim

that to return her to Pakistan would amount to a breach her protected rights under the ECHR (Articles 3 and 8).

History of the Matter

2. The Appellant is a citizen of Pakistan born 1st January 1931. She is a widow and has one son living in Pakistan, whom it is said is unwilling to provide care for her. She seeks to remain in the United Kingdom (having entered as a visitor) under the care of her second cousin Mohammed Jahangir Khan. He is able and willing to care for and look after her.
3. The Appellant's appeal against the Respondent's refusal came before the First-tier Tribunal at North Shields (Judge Manchester). During the course of the hearing the Judge heard oral evidence from the Appellant and her United Kingdom based Sponsor. A cousin of the Sponsor also attended to give evidence. The Judge having correctly identified that the Appellant could not meet the Immigration Rules, went on to consider whether the refusal decision, would breach the Appellant's Article 8 protected rights. He dismissed the appeal under Article 8 ECHR. The Appellant had also claimed that the refusal decision would breach her Article 3 rights but there was no recorded decision on whether Article 3 was engaged.
4. The Appellant sought and was granted permission to appeal the First-tier Tribunal's decision. In granting permission Judge Keane said,

“The judge made an arguable error of law in failing to arrive at findings of fact in respect of material matters. Central to the appellant's contentions was a contention that in the past the appellant has been witnessed in a neglected condition. It was the appellant's contention, by reference to the sponsor's witness statement, particularly at paragraphs 28, 29, 34, and 35 that the appellant has been witnessed in a neglected condition, has not been fed on time, has not been bathed, has been the recipient of humiliating behaviour from her own family and has been clad in smelly clothes. A careful perusal of the judge's determination did not reveal a finding made by the judge in respect of such contentions which were central to the appellant's overall contentions. At paragraph 51 of his determination the judge found that it had not been (sic) shown that the appellant would “not have adequate care and support available to her”. If the judge had made a finding in respect of (the apparently uncontradicted evidence, there being no cross-examination at the hearing) of the sponsor that the appellant had been witnessed in a neglected condition in the past he might well have arrived at a different finding in respect of her prospect of receiving adequate care and support at the date when the Respondent made the decision under appeal. The judge made an arguable error of law but for which the outcome of the appeal might have been different. The application for permission to appeal is granted”.

Thus the matter comes before me to decide whether the determination of the First-tier Tribunal Judge contains an error of law such that the decision needs to be set aside and remade.

Error of Law Hearing

5. Mr Holt on behalf of the Appellant submitted that the determination of the Judge could not stand because the Judge's approach to the evidence was flawed. The Judge had asked himself the wrong question. Looking at paragraph 51 of the determination the Judge had concluded by saying,

"I do not find that it has been established, taking into account the concerns highlighted above, that it is more likely than not that, if she were returned to Pakistan with the financial support available from the Sponsor, the Appellant would not have adequate care and support available to her".

That was the wrong approach. What the Judge should have been evaluating was the evidence of the apparent lack of care and neglect which the Appellant had suffered in Pakistan and should have made a clear finding on that part of the evidence.

6. He further submitted that it was case that the Appellant, despite receiving financial remittances from her UK Sponsor had been observed in the neglected condition and it had always been the Appellant's case that adequate care was not provided for her in Pakistan in the past and therefore if returned there now nothing would have changed. She would still suffer the same neglect. The lack of clear findings on that point alone meant that the decision could not stand. In addition the Appellant had claimed that a return to Pakistan would constitute a breach of her Article 3 ECHR rights but there was no finding at all on that ground.
7. Mrs Pettersen on behalf of the Respondent sought to defend the determination. She referred me to paragraphs 21 and 22 of the determination and submitted that it was clear that the Judge was not under any illusion that the Appellant had been taken away from where she was being neglected but had nevertheless come to the conclusion that she could be returned to Pakistan with the financial support available from the Sponsor. The Judge had found that support for the Sponsor would be available and had weighed up all the relevant matters and reached a proportionate decision.

Has the Judge Erred?

8. I find that that Judge Manchester's determination should be set aside for legal error on this basis. The core of the Appellant's claim, revolves around a contention that in the past the Appellant has been witnessed in a neglected condition and there is no-one in Pakistan able or willing to provide adequate care for her. This is despite the Appellant having a son and daughter-in-law living in Pakistan. The Respondent's case is that the Appellant's position does not amount to sufficient compelling or compassionate circumstances justifying granting leave to remain exceptionally. The Judge needed to make a clear finding, based on all the relevant evidence, on whether he was satisfied or not that he accepted the evidence of the Appellant and her witnesses that she was found in a neglected condition and no-one was available or willing to provide adequate care for her in Pakistan. Dependent upon those findings, the Judge would be in a position to determine whether a return to Pakistan would

constitute a breach of the Appellant's protected rights under Article 3 and Article 8 ECHR. Such a finding would then enable the Judge to dispose of the Appellant's appeal.

9. I find that the lack of a clear finding on this central issue, alone is sufficient to render the determination unsatisfactory.
10. I set aside the determination of the First-tier Tribunal. I consider that the failure to make clear findings means that it is possible that the Judge's approach to the evidence is flawed. Therefore I consider that nothing can be saved from the determination. Therefore this is an appropriate case to be remitted to the First-tier Tribunal (not Judge Manchester) to hear the evidence afresh and make full findings of fact on those matters in contention.

DECISION

11. The determination of the First-tier Tribunal which was promulgated on 19th November 2013 is set aside. The appeal is remitted to the First-tier Tribunal to remake the decision.

No anonymity direction is made

Signature
Judge of the Upper Tribunal

Dated