



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

Appeal Number: IA/28446/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 3 July 2014

Determination

Promulgated

On 14 July 2014

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

and

MRS HAMIDA BEGUM

Claimant

Representation:

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

For the Claimant: Mr Sargheel Javed

DETERMINATION AND REASONS

1. The respondent appeals with permission against the determination of First-tier Tribunal Judge Mulvenna promulgated on 13 March 2014 in which he allowed the claimant's appeal against the decision of the Secretary of State made on 7 August 2013 to refuse her leave to remain.

2. The claimant is a widow now aged 85. She has difficulty in standing and spends most of her life in bed as a result. She requires assistance in all aspects of personal care, and even to move around her home. She last entered the United Kingdom on 29 March 2012 and on 25 September 2012 applied for further leave to remain with her daughter (“the sponsor”) and her family. That application was refused on the basis that she did not meet the requirements of the Immigration Rules as set out in Appendix FM and paragraph 276ADE, the respondent noting that although she claimed to be needing medical attention and was too frail to travel, she had not provided documentary evidence of this.
3. At the appeal to the First-tier Tribunal she was represented by her grandson, Mr Sargheel Javed who is the son of the sponsor. The judge accepted [16] that the claimant did not qualify for indefinite leave to remain under any of the categories covered by the respondent nor did she qualify as an adult dependent relative as she had not entered the United Kingdom with leave to remain in that capacity. The judge then considered Article 8 outside the Immigration Rules, finding that:-
 - (i) the claimant has a family life in the United Kingdom with her daughters who are both British citizens and their families comprising her children and grandchildren [24] and removal from the United Kingdom would interfere with that;
 - (ii) the interference was sufficiently serious to engage Article 8 [25] and that whilst that was in accordance with the law and had a legitimate aim, the interference was disproportionate as the claimant would suffer significantly from the removal being a widow who lives alone in Pakistan who is frail with significant mobility problems and requiring assistance in all her daily needs including personal care such as washing and going to the toilet as evidenced by her GP;
 - (iii) the claimant was reliant on the care given by the sponsor and her family and without that she would be unable to manage and that whilst she might be able to make a successful application to return, her present and continued reliance on family in the United Kingdom would make it unduly harsh to expect her to return to make the application.
4. The respondent sought permission to appeal on the grounds that Judge Mulvenna’s finding that removing the claimant to Pakistan would be a disproportionate interference with her right to respect for her family and private life involved the making of an error of law because:-
 - (i) the judge made no findings on the possible care options open to the claimant and whether there were family members in Pakistan who would be able to accompany her or family members in the UK who would accompany her to Pakistan;

- (ii) the conclusions that the claimant would succeed in future was wholly speculative and should not enhance her human rights claim;
- (iii) there were no findings in the evidence before the judge as set out in the letter from the GP saying that she was unable to return to Pakistan or that her ailments are of such severity or that her physical wellbeing and welfare would be compromised by the decision to refuse her application;
- (iv) the judge failed to establish the circumstances are exceptional or very compelling.

5. On 25 April 2014 First-tier Tribunal Judge P J M Hollingworth granted permission to appeal to the Upper Tribunal.

Decision

6. Mr Harrison made no submissions other than stating that he wished to rely on the grounds of appeal. In the circumstances, I considered that it was not necessary to hear from Mr Javed.

7. I deal with the grounds in turn.

Ground 1 - failure to make findings with respect to care options

8. The grounds of appeal do not establish that it was put to the judge by the respondent that he should take into account care options open to the claimant in Pakistan or whether there would be people able to accompany her or family members who could look after her there. It was for the respondent to show that removing the claimant was proportionate. It is not sufficiently established that submissions to that effect were put before the Tribunal, nor were they properly raised in the refusal letter; it cannot be said that the judge erred in law in not taking them into account.

Ground 2 - taking into account an irrelevant matter - application from abroad

9. It is evident from the judge's findings that he had concluded that the claimant had established a family life in this country with the sponsor, given the degree of dependency. That was a finding open to him. In considering the fact that an application could be made from abroad, the judge was not speculating in an impermissible manner. It is evident from **SSHD v Hayat** [2012] EWCA Civ 1054 that whether an application can be made from abroad needs to be considered and in any event, the Judge found, as was open to him, that a requirement to do so in this case would be unduly harsh.

Grounds 3 & 4- failure to make findings establishing exceptional or compelling circumstances

10. It was the clear evidence before the Judge that there were no other relatives in Pakistan. Whilst it is correct that the judge does not set out in detail what is said in the letter from the doctor, it states the following:-

“This 84 year old lady is very frail and really struggles with low mobility. She spends most of her time in bed as she is so unstable on her feet but when she mobilises around the house or goes to the toilet she needs somebody with her.

She has no significant medical history apart from hypertension for which she is on treatment.

On examination she is very unsteady on her feet and had to be supported by a member of her family when I saw her in the surgery today.”

11. Whilst it is correct to say that these do not say that she is unable to fly, they do indicate the extent to which she is entirely dependent on her family for all aspects of her care. The judge was entitled to take these letters into account and it was open to him on the facts of this case to conclude given the claimant’s age, vulnerability and being entirely dependent on her family, with whom she was found to have a family life, that the interference that would be caused by requiring her to go back to Pakistan did amount to compelling circumstances.

12. Accordingly, I am satisfied that the determination of First-tier Tribunal Judge Mulvenna did not involve the making of an error of law and I uphold it.

SUMMARY OF CONCLUSIONS

- 1 The determination of the First-tier Tribunal did not involve the making of an error of law and I uphold it

Signed

Date: 10 July 2014

Upper Tribunal Judge Rintoul