



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/45750/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 18 June 2014

Determination Promulgated
On 1 July 2014

Before

UPPER TRIBUNAL JUDGE ROBERTS
UPPER TRIBUNAL JUDGE CLIVE LANE

Between

MAROOF JAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Khan, instructed by Morgan Dias Immigration Consultants
For the Respondent: Mr Diwncyz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Maroof Jan, was born on 10 September 1936 and is a citizen of Pakistan. By a decision dated 25 October 2013, the respondent refused the

appellant's application for further leave to remain in the United Kingdom; she had entered as a visitor on 26 June 2012. The appellant appealed against the decision of the First-tier Tribunal (Judge Hindson) which, in a determination promulgated on 4 March 2014, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. Both parties agree that the appellant's application could not succeed under the Immigration Rules. She did not meet the requirements of paragraph 276ADE or Appendix FM. In his determination at [11-15], Judge Hindson set out the facts of the appeal briefly. He noted that the appellant had been travelling to the United Kingdom regularly for about seven years and has two daughters living here. The appellant's husband had lived in the United Kingdom from 1960 until his death in 2000 but the appellant had remained living in Pakistan. She lives alone in Pakistan and has no family members to assist her. Her health is poor. She has been diagnosed with breast cancer and is receiving medication and, having broken her ankle, she has been confined to a wheelchair. Any form of travel is now difficult and the appellant claims that her health problems would make travelling to and from Pakistan almost impossible. The appellant enjoys a widow's pension from the United Kingdom (her late husband was a British citizen) of £587 per quarter and she has received additional financial support from her family in the United Kingdom.
3. The judge was not satisfied that the appellant had been paying privately for her medical treatment in the United Kingdom. He found that the appellant was "reasonably well-off financially." [19]. At [21], the judge considered *Gulshan* [2013] UKUT 640 (IAC). At [22], he wrote:

Consideration of the Rules is the starting point. Only if there are arguably good grounds for granting leave to remain outside the Rules is it necessary, for Article 8 purposes, to go on to consider whether there are compelling circumstances not sufficiently recognised under the Rules.

It seems to me that there was nothing especially unusual about this case. The appellant is living alone in Pakistan following the death of her husband and relocation to the UK by her daughter. She is elderly and her health is deteriorating. It is understandable the family here want her to remain in the UK so they can look after her. Treatment for her various ailments is available in Pakistan. It is open to the appellant to make the appropriate application under the Rules from Pakistan.

I do not find the test laid down in *Gulshan* is satisfied in this case. I do not find any arguably good grounds for granting leave outside the Rules.

Miss Khan, for the appellant, submits that the judge's application of *Gulshan* was flawed. She submitted that the judge should have engaged in a detailed consideration of all the relevant evidence in order to decide whether he should proceed with an analysis of the appeal on Article 8 ECHR grounds outside the Immigration Rules and that Judge Hindson did not take account of the best interests of the appellant's British granddaughter with whom she lives at the present time. The appellant had been entitled to receive treatment from the NHS under the

National Health Service (Charges to Overseas Visitors) Regulations 1989 at the time the First-tier Tribunal heard the appeal. The judge had also failed to take account of the fact that the appellant's late husband had contributed towards the economy of the United Kingdom (and the work of the NHS) by paying income tax and national insurance. The judge had concentrated on the "ordinariness" of the appellant's circumstances and their possible similarity to those of appellants in other appeals and had done so to the exclusion of any proper consideration of the consequences for the appellant and her family of her removal to Pakistan and whether those consequences would be unjustifiably harsh. The appellant has mental health problems to which the judge did not refer in deciding whether to consider Article 8 outside the Rules and her breast cancer is a serious condition (a large locally advanced breast tumour). There is medical evidence to show that the appellant would "continue to require long term care from her family".

4. The application of *Gulshan* requires a proper exercise of discretion by a judicial decision maker who must focus on the particular facts of each and every case. The extent of the analysis required in exercising the discretion to consider Article 8 outside the Rules does not, in our opinion, require an analysis as detailed or as extensive as, for example, the answering of the familiar questions posed by the House of Lords in *Razgar* [2004] UKHL 27. It does, however, require something rather more than Judge Hindson has provided in this determination. As we have set out above, the circumstances of this appellant are rather less usual than Judge Hindson indicates at [23]. There were a number of important factors to which the judge did not refer. Whilst he did not need to refer to each and every factor in detail, the judge did need to explain why some of the factors particular to this appellant's case, in particular her medical condition, had not weighed in her favour. We find that the determination of the First-tier Tribunal should be set aside and that we should remake the decision. Both parties agreed that we did not need to hear any further evidence should we set aside the determination and they were content that we should remake the decision on the basis of the evidence before the First-tier Tribunal and the findings of fact of Judge Hindson.
5. Returning to *Gulshan*, we refer again to the various aspects of this case which were highlighted by Miss Khan in her submissions. We find that the circumstances of this appellant are sufficiently unusual and compelling as to require us to consider Article 8 ECHR outside the Rules. In reaching that decision, we have had regard to the fact that the appellant is in very poor health and that, while she may in the future require NHS treatment, she is herself in receipt of a pension from the United Kingdom Government on account of contributions made by her late husband who lived and worked here. She is not simply an elderly lady who would prefer to receive assistance from her younger family members but rather an invalid who requires the use of a wheelchair and who is receiving treatment for a locally aggressive breast cancer. These circumstances go beyond the observation of Judge Hindson that "it is understandable the family here want her to remain in the UK so they can look after her."; the requirement for care has become a necessity. Her circumstances have characteristics which are particular to the appellant and which, in our view, have not been anticipated in the current version of the Immigration Rules. We are here

concerned less with questions of compassion and sympathy for the appellant but more with the practical provision of care and assistance by her family and, as both parties agreed, the assessment of the proportionality of the decision to remove her. We are well aware that health services do exist in Pakistan to which the appellant might have access and that her United Kingdom family would no doubt assist her in paying for those services, if necessary. However, we have also considered the fact that she is very elderly, will find any travel difficult and that her health and physical capabilities are likely to diminish, possibly quite rapidly.

6. It is, however, vitally important that we also consider the public interest concerned with her removal to Pakistan. The maintenance of effective immigration control is a very important consideration and we are aware that the public interest concerned with the removal of those who come to this country as, for example, visitors and then, very soon after arrival, seek to remain permanently may be a particularly strong one.
7. In assessing the proportionality of the decision, however, we find ultimately and by reference to the particular facts of this case, that the interference which would be caused to the appellant's private and family life here in the United Kingdom outweighs the public interest concerned with her removal. It is for that reason we have decided to allow the appeal on Article 8 ECHR grounds.

DECISION

8. The determination of the First-tier Tribunal which was promulgated on 4 March 2014 is set aside. We have remade the decision. The appeal in respect of the Immigration Rules is dismissed. The appeal is allowed on Article 8 ECHR grounds.

Signed

Date 20 June 2014

Upper Tribunal Judge Clive Lane