Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/48939/2013

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 10th July 2014	**On 9th September 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MRS RAZIA BEGUM
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Rehman, Sponsor
For the Respondent: Mrs K Heaps

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan born on 1st January 1943. The Appellant first arrived in the UK on 18th May 2007 with valid leave to enter as a visitor until 17th October 2007. The Appellant subsequently entered

the United Kingdom on 14th October 2008 with leave to enter as a visitor valid to 12th August 2010. The Appellant last entered the United Kingdom on 1st March 2012 with leave to enter as a visitor valid to 13th January 2014. Leave to enter was granted for six months on entry and therefore leave expired on 1st September 2012. On 30th August 2012 the application was made for leave to remain on the grounds of private life in the United Kingdom and medical conditions.

2. On 1st November 2013 the Home Office issued a reasons for refusal letter. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Law sitting at Manchester on 13th March 2014. In a determination promulgated on 21st July 2014 the Appellant's appeal was allowed under Article 8 outside the Immigration Rules.

3. On 7th April 2014 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended:

   (1) That the judge had erred in law by failing to identify the reasons by which he allowed the appeal.

   (2) If (which was denied) the judge had made a finding to the effect that the refusal was incompatible with the Appellant's Convention rights, the judge misdirected himself by:

      (a) failing to identify a compelling circumstance not sufficiently recognised by the Rules raising an arguable case that Article 8 fell to be considered separately; and

      (b) failed to consider the public interest in firm immigration control which was a relevant consideration in any proportionality evaluation.

4. On 16th May 2014 First-tier Tribunal Judge Hollingworth granted permission to appeal. Judge Hollingworth considered that it was arguable that the judge had failed to give adequate reasons for allowing the appeal on compassionate grounds outside the Rules and neither did he attach sufficient weight to the availability of medical treatment in Pakistan in relation to the Appellant's condition or to the need properly to have regard to the public interest in the proportionality evaluation.

5. It is on that basis that the appeal comes before me. This is an appeal brought by the Secretary of State but for the purpose of continuity within proceedings the Secretary of State is herein referred to as the Respondent and Mrs Begum as the Appellant. The Appellant appears by Mr Rehman, the Sponsor and the Secretary of State by their Home Office Presenting Officer Mrs Heaps.

Submissions/Discussions

6. Mrs Heaps refers me to the Grounds of Appeal pointing out that they are detailed and that it is unclear from the determination as to the basis on

which the appeal was allowed. She submits that the findings of the First-tier Tribunal Judge make reference to Rules 276ADE but that the judge has not made a finding that the Rule cannot be met. She acknowledges that there is a discussion on medical issues and care within the determination before the judge makes a ruling deciding to allow the appeal outside the Rules. However she submits that the Rules are a detailed statement and before finding the circumstances are compelling, it is necessary to follow the test set out in *Gulshan* and the subsequent authorities. She submits that the Immigration Judge did not carry out that task. Further she points out that it is accepted at paragraph 18 of the determination that medical treatment is available in Pakistan and the Appellant has daughters in Pakistan. She submits that there is a material error of law and asked me to set aside the decision.

7. Mr Rehman is the Appellant's son and he indicates that he felt it was appropriate for him to attend to explain what he feels about his mother. He acknowledges the basis of the appeal and points out that it has been made clear that his mother could not get the requisite care in Pakistan where she has a daughter and that her daughter (his sister) is in poor health and needs looking after herself. Apparently his sister can barely stand, it would be physically impossible for her to look after her mother bearing in mind that his sister requires 24-hour-care. He states that he was faced with the decision as to whether he should leave his three children and his wife and go and look after his mother in Pakistan or quite simply leave her without any support to die there. He points out that his mother is on three forms of antidepressants and that she suffers from severe osteoarthritis. He submits that the judge took all these factors into account and that the decision does not disclose any material error of law.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider

every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

10. I start by noting that this is a court of law and not a court of sympathy. Further the First-tier Tribunal Judge who heard this appeal is a very experienced judge, certainly not one known to be influenced by a sympathetic approach rather than by following the law. Like the First-tier Tribunal Judge I have had the opportunity to see the Appellant and her son. Whilst Mr Rehman has only given submissions of the evidence before me I note the First-tier Tribunal Judge found in paragraph 17 that he was a credible witness with obvious concerns regarding the health of his mother and that he believed it was a duty placed upon him and his family to look after his mother in old age. Where the judge, it is argued, has erred, is in his failure to give due consideration to the relevant case law and to give the basis by which he allowed the appeal. The latter point is unsustainable. Paragraph 21 of the determination sets it out quite clearly "as indicated the appeal is limited to the question of the Appellant's rights outside the Immigration Rules". It is abundantly clear that this is an appeal pursuant to Article 8 outside the Rules and it does not sit well with the Secretary of State to maintain that that is not the manner upon which this matter has been looked at by the First-tier Tribunal Judge.

11. The question then arises as to whether or not the judge has applied the law. I am satisfied that he has, although I acknowledge had there been consideration of the authorities and an explanation thereof then the basis upon which the judge came to his conclusions would have been easier to follow.

12. The law in this matter is rapidly evolving and there have been several authorities which postdate that of the hearing before the First-tier Tribunal Judge.

13. The Tribunal in *Gulshan* made clear and has repeated subsequently in *Shahzad (Article 8: legitimate aim) [2014] UKUT 00085 (IAC)* at paragraph (31):

> *"Where an area of the rules does not have such an express mechanism, the approach in R (Nagre) v Secretary of State for the Home Department [2013] EWHC 720 (Admin) ([29]-[31] in particular) and Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC) should be followed: i.e. after applying the requirements of the rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them."*

14. The Court of Appeal in *MM (Lebanon) v Secretary of State for the Home Department [2014] EWCA Civ 985* at paragraph 128 went on to state:

> *"Nagre does not add anything to the debate save for the statement that if a particular person is outside the Rule then he has to demonstrate, as a preliminary to a consideration outside the Rule that he has an arguable case that there may be good grounds for granting leave to remain outside the Rules. I cannot see much utility in imposing this further intermediary test. If the applicant cannot satisfy the Rule, then there either is or there is not a further Article 8 claim. That will have to be determined by the relevant decision maker."*

15. What the judge has done is effectively set out the compelling circumstance at paragraphs 18 to 21 of his determination. Had the judge emphasised that those paragraphs constituted the compelling circumstances by which this matter should be looked at outside the Rules and made a detailed reference to the relevant authorities there would have been much greater clarity in the determination which may well have satisfied the Secretary of State. However the fact remains that he did not. To that extent there was an error of law but I do not consider it material bearing in mind the full details set out within the determination and the analysis that I have given herein. In such circumstances the decision of the First-tier Tribunal does not disclose a material error of law and the decision of the First-tier Tribunal is maintained.

Decision

16. The decision of the First-tier Tribunal does not disclose a material error of law and the appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal is maintained.

17. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris