



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

Appeal Number: IA/50409/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 30 July 2014

Determination

Promulgated

On 5 August 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MRS NIGHAT HAFEEZ
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Usman of International Immigration Advisory Services
For the Respondent: Miss Johnson Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Mrs Nighat Hafeez date of birth 1 January 1955, is a citizen of Pakistan.
2. I have considered whether any of the parties to the present proceedings requires the protection of an anonymity direction. Taking account all of

the circumstances I do not consider it necessary to make an anonymity direction.

3. This is an appeal by the appellant against the determination of First-tier Tribunal Judge Laws promulgated on the 11th April 2014. The judge dismissed the appellant's appeal against the decisions of the respondent to refuse her further leave to remain in the United Kingdom and thereupon to remove the appellant from the United Kingdom under section 47 of the 2006 Act.
4. By decision taken on 15 May 2014 leave to appeal was granted. It is indicated in the leave to appeal that the judge has failed to consider paragraph 276 ADE of the Immigration Rules, specifically 276ADE (vi), and whether or not the appellant, who allegedly has no family or accommodation in Pakistan, therefore had "no ties" within Pakistan.
5. The grounds of appeal otherwise appear to raise generally article 8 of the ECHR, asserting that the judge's assessment of article 8 was flawed. The leave granted was not limited to any specific ground.
6. The appellant has challenged the decision on the basis that the judge has failed to take account of the fact that the appellant had no ties to Pakistan and therefore could rely upon paragraph 276ADE (vi). Paragraph 276 ADE provides:-

Requirements to be met by an applicant for leave to remain on the grounds of private life

276ADE. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

- (i) does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. in Appendix FM; and
- (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
- (iii) has lived continuously in the UK for at least 20 years (discounting any period of imprisonment); or
- (iv) is under the age of 18 years and has lived continuously in the UK for at least 7 years (discounting any period of imprisonment) and it would not be reasonable to expect the applicant to leave the UK; or

(v) is aged 18 years or above and under 25 years and has spent at least half of his life living continuously in the UK (discounting any period of imprisonment); or

(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

7. In seeking to pursue the appeal under paragraph 276 ADE it was being suggested that the appellant had no ties to Pakistan and that therefore she satisfied paragraph 276ADE (vi).
8. Before me in light of the fact that the appellant had lived the majority of her life until 2012 in Pakistan; that she spoke a language spoken in Pakistan; and that she had lived in the area of Lahore a significant period of time prior to coming to the UK, the representative accepted that it had not been proved that the appellant had no cultural or social ties in Pakistan. The appellant's representative had to accept that the appellant had come to the UK as a visitor; that spoke Punjabi/Urdu; and had lived for most of her life in Pakistan. Whilst there was evidence that she had no children in her home area and that now she had sold or given up her home in that area, the evidence on behalf of the appellant otherwise did not deal with whether she had other social or cultural ties in her home country.
9. Before the judge it appears to have been accepted that the appellant could not meet the requirements of the rules as is evident from paragraph 18 of the determination where it was noted that the application was for leave outside the rules.
10. The appellant had come to the United Kingdom on the basis of a visit visa in 2012. She had come with her second son, who was entering the United Kingdom for the purposes of studying. She had another son in the United Kingdom, who she was ostensibly visiting. It was being alleged that she no longer had any family in Pakistan because the second son, who was a student, was now studying in America. She was claiming to be entitled to stay because of her medical conditions and because she had no care or accommodation in Pakistan.
11. The judge considered with care the application made. The judge has commented in paragraph 20 that the appellant's intentions in coming to the United Kingdom were clear, she had no intention of going back to her home country and intended to remain here. The appellant stated that she intended to settle in evidence. There was no evidence that the appellant did not have cultural or social ties back in Pakistan. Indeed the evidence was silent as to whether or not she had other family members, not her immediate children in Pakistan such as her brothers and sisters or the brothers and sisters of her husband, who was deceased. On the basis of

the evidence no submissions were made to the judge that the appellant did not have any ties, whether cultural or social to Pakistan.

12. In light of the evidence it was clear that the appellant was not basing her case on having no cultural or social ties. There was no evidence before the judge and accordingly the appellant could not meet the requirements of paragraph 276 ADE, specifically subparagraph(vi). There is no material error of law in the way that the judge has dealt with the issue.

13. Before me the appellant's representative sought to advance arguments based upon Article 8 and the case of MM & others 2014 EWCA Civ 985. The representative sought to rely upon paragraph 160 of MM. Paragraph 160:-

160 If, as is suggested in the evidence of the respondents, decision makers have not been applying their minds to whether a "proportionality" test has to be used when considering "Exceptional circumstances" in individual cases, then that is not a basis on which to challenge the lawfulness of the MIR themselves. Such an approach may be a ground for challenging an individual decision; but that is not the object of the present litigation.

14. The judgement in MM is dealing with the decision of Mr Justice Blake and the challenge to the rules as such being a breach of article 8. The judgment of the Court of Appeal is emphasising that the Immigration Rules are article 8 compliant but that there exists outside the Immigration Rules rights under Article 8. That does not represent a change in approach to article 8 outside the rules. The cases of Gulshan 2013 UKUT 640, Nagre 2013 EWHC 720, MF (Nigeria) 2013 EWCA Civ 1192 and Haleemudeen 2014 EWCA Civ 558 have all advocated an approach that recognises that the rules are article 8 compliant and in order to succeed on article 8 grounds outside the rules there have to be factors to warrant consideration of the appeal on such grounds. Whilst terms such as there have to be exceptional factors to justify such consideration that is not to impose a test of exceptionality but merely to note that in the main the Immigration Rules will cover the situations in which individuals should and could succeed on article 8 grounds.

15. The paragraph from the judgment relied upon is emphasising that the rules are in the main seeking to give a rational structure to a line of cases involving the approach to be taken between the Immigration Rules as they now are and article 8 of the ECHR on the basis of Strasbourg jurisprudence and Razgar 2004 UKHL 27 and Huang 2007 UKHL 11.

16. The case law identified that in most circumstances the current Immigration Rules will constitute a complete code. Thereafter there have to be factors within a case which justify consideration of article 8 outside the rules. The mere fact that an individual cannot meet the requirements of the rules is not itself justification for finding that the rules are not proportionate or that decision in any specific case is not proportionate.

17. The judge had clearly noted that the appellant's evidence was that she was coming to the United Kingdom to settle [see paragraph 18]. The

appellant had however not made an application for settlement but rather entered on a visit visa and in so doing the judge was satisfied that she had done so deliberately to avoid making the correct application. The judge clearly found that the appellant's intentions in that regard were dishonest. The judge did not find anything that was exceptional within the appellant's circumstances. Whilst the appellant had medical conditions the judge was satisfied that such could be treated in Pakistan. The appellant had last lived with her son in the UK some years previously but was now seeking to enter on a false basis and establish a family life that had not existed for some years and in the case of his family had never existed. The judge has gone on to consider whether there were any factors which justify consideration of this matter on article 8 grounds and whether or not the matter should be allowed on article 8 grounds. The judge has found that there were no factors which warranted consideration on article 8 grounds.

18. The judge was merely looking at whether or not in all the circumstances where the appellant had deliberately sought to evade immigration control the present decision was proportionately justified in the light of that. The judge has found on all the circumstances that there would be no breach of article 8 rights. Those were findings of fact that the judge was entitled to make on the basis of the evidence presented.
19. Even if the judge had failed to assess the proportionality issue correctly, given all the circumstances especially the circumstances in which the appellant has clearly sought entry on a false basis and dishonestly, I would in any event have found that the decision made is proportionately justified.
20. In the circumstances there is no material error of law within the determination.

Decision

21. I uphold the decision to dismiss this matter on all grounds

Signed

Date

Deputy Upper Tribunal Judge McClure