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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/10364/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 30 January 2015	**On 13 February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

RAJA MOHAMMAD TAJ
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Z Nasim, Counsel
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 1 January 1953. He has appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Devittie, promulgated on 3 November 2014, dismissing his appeal against a decision of the respondent, dated 10 February 2014, to remove him to Pakistan having refused his application for leave on human rights grounds.

2. The background is that the appellant last arrived in the UK in August 2003 with leave to enter as a visitor. His application to vary his leave as a work permit holder was refused on 15 December 2004. He did not appeal against that decision. A similar application was refused with no right of appeal on 18 July 2005. On 17 October 2012 he was served with a notice of liability to removal as an overstayer. He was found to have been working illegally as a butcher. On 13 November 2012 he submitted an application for a derivative right of residence card and this was refused on 25 March 2013. On 17 September 2013 his solicitors submitted the application which led to the decision now appealed. In his application the appellant explained he had been closely involved in the upbringing of his niece, Naeem Akhtar. Naeem came to the UK to marry in 2002. She has six children born between 2002 and 2009. Her marriage broke down and she is separated from her husband, Ahtiq Raja. The appellant has lived with her and supports her and her children.

3. The reasons for refusal letter, dated 10 February 2014, explained the appellant did not meet the requirements of the rules. The letter noted the appellant had caring responsibilities for his niece's son, Owais, who has serious health problems. However, Naeem Akhtar had access to assistance from social services so alternative care arrangements could be put in place. The best interests of all the children required them to remain in the UK with their mother, which they could do. There were insufficient factors justifying allowing the appellant to remain in the UK.

4. At his appeal it was conceded the appellant could not meet the requirements of the Immigration Rules. The Judge recorded that there was no dispute as to the appellant's personal circumstances, as set out in the report of the independent social worker, Peter Horrocks, and the report by Owais's consultant, Dr Grunewald. The Judge found the appellant had established family and private life in the UK. The determinative issue was the proportionality of removal. He accepted Naeem Akhtar had very onerous responsibilities in maintaining and looking after six young children some of whom have conditions which require her regular attention.

5. Finally, the Judge said this at paragraph 14:

> "(ii) … However, in my view Dr Grunewald's report is to be seen in the context of the appellant's immigration history, which demonstrates a number of failed attempts to acquire the right to work in the United Kingdom. It seems to me that the appellant's niece's objective needs have provided the appellant the opportunity to meet the evidential challenges he has been facing in seeking leave to remain, and that it is in that context that the appellant has been providing active support for his niece in caring for her children. I do not doubt that he has provided that support and that he has a genuine concern for the welfare of his niece.
>
> (iii) I do not however accept that the appellant has a long term

> commitment to serving as a full-time assistant to his niece's children. I do not accept that if granted leave, the appellant would in the long term regard it as his vocation to provide care and support to his niece and her children. As I have indicated, the appellant's immigration history reinforces my conclusion [in] that regard.
>
> (iv) It has not been demonstrated that, in the appellant's absence, social services would not be able to increase the level of support provided to the appellant's niece and her children. Furthermore, the evidence clearly demonstrates that the appellant's niece has an effective network of family support. It was disclosed in oral evidence that, although she is estranged from the father of her children, he does visit the children on a fairly regular basis, and, it would appear, that he is a practising lawyer who therefore has the financial means to support the appellant's niece. The appellant's niece's mother-in-law is her aunt, and she lives within close proximity; she visits the appellant's niece on a regular basis. She has regular contact with her aunt and her cousins. There was no suggestion in the evidence of the appellant or his niece, that her aunt and cousins lack concern for her personal circumstances."

6. The Judge concluded in paragraph 15 that the appellant's removal would not have sufficiently serious consequences for the well-being of his niece's children to outweigh the public interest in the maintenance of effective immigration control.

7. The appellant submitted grounds seeking permission to appeal drafted by counsel who had represented him before the First-tier Tribunal. There are three grounds:

> (i) Having made no adverse credibility findings, it was irrational and perverse for the Judge to find the appellant had been providing care in order to furnish himself with the means of seeking leave to remain;
> (ii) The Judge failed to have regard to section 117C of the Nationality, Immigration and Asylum Act 2002, which supported the appellant's case; and
> (iii) The Judge had misdirected himself in the proportionality assessment.

8. Permission to appeal on all grounds was granted by Judge of the First-tier Tribunal Andrew with particular reference to the second ground.

9. The respondent filed a response opposing the appeal, arguing the Judge was entitled to reach the conclusion he reached on proportionality and that the grounds were merely an attempt to re-argue the case.

10. I indicated to the representatives that my preliminary view was that it was difficult to find in the decision any reasons for the Judge's adverse credibility finding with regard to the appellant's long term commitment to his niece and her children. In the early part of his decision he set out uncritically the evidence of the appellant and his niece and also the

views of the social worker and consultant. He stated in paragraph 10 that the appellant's niece's personal circumstances were not contested. He recorded that the consultant regarded the appellant's continued presence as absolutely essential for the well-being of Owais. He then reached the conclusion set out in paragraph 14(ii) without giving any reasons. Whilst much might be inferred from the appellant's immigration history, I do not think the Judge has given adequate reasons in his decision to explain how he came to the view he did.

11. It is also clear the Judge failed to consider section 117C in making his proportionality assessment, as he was required to do.

12. Mr Walker did not argue the decision was not flawed and he pointed out another deficiency in that the Judge had not considered the appellant's relationship with his wife, who passed away in July 2014, and his own children, who remained in Pakistan.

13. Mr Nasim asked me to record that he had submitted to Judge Devittie that the decision made by the respondent was not in accordance with the law because she had not considered the carer's policy. He did not have a copy of that policy to show me and there is no copy in the file.

14. I set aside the decision of the First-tier Tribunal because it contains inadequate reasoning. If the appellant is to be told he is not believed to hold a genuine long-term commitment to his niece and her children, he must be told why.

15. After hearing submissions on the issue, I decided that the appeal required hearing de novo on article 8 and the best interests of the children. I identified some areas about which there was insufficient evidence, such as: (i) the appellant's relationship with his own family in Pakistan; (ii) the true extent of Mrs Naeem's husband's involvement with the children and (iii) the appellant's work history. On that last point, Mr Nasim said there was no evidence to support the assertion in paragraph 20 of the refusal letter that the appellant had been encountered working in a butcher's shop as recently as 17 October 2012.

16. Given these gaps in the evidence and findings it appeared appropriate to remit the case to the First-tier Tribunal for re-hearing with the following directions:

    1. The appeal shall be heard again by the First-tier Tribunal by any judge other than Judge Devittie;
    2. The issues are limited to article 8, it having been accepted the appellant does not meet any of the requirements of the Immigration Rules;
    3. The parties may file additional evidence provided it is filed and served at least 10 days before the date of hearing;

4. The appellant may argue the decision is not in accordance with the carer's policy but he must produce a copy of it to the Tribunal;
5. There are no preserved findings of fact;
6. The time estimate for the hearing is 2 hours; and
7. The Tribunal shall provide a Mirpuri/Pahari interpreter.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside.

Anonymity direction not made.

Signed **Date 30 January 2015**

Judge Froom,
sitting as a Deputy Judge of the Upper Tribunal