Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/20130/2014

THE IMMIGRATION ACTS

Heard at North Shields	**Decision and Reasons Promulgated**
On 3 September 2015	**On 9 September 2015**
Prepared on 4 September 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

F B
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Weatherall, Counsel instructed by Harris & Green Solicitors
For the Respondent: Mr Kingham, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, born 23 March 1963, is a citizen of Pakistan. She came to the UK as a family visitor with a valid grant of entry clearance on 12 June 2006, granted as the result of a successful appeal to the Tribunal at which both she and her sponsor, her niece Ms S gave evidence. She failed to leave, or to apply for a variation of

her leave, before the expiry of that leave and she thus became an overstayer on 12 December 2006.

2. On 7 March 2013 the Appellant was the subject of a visit by Immigration Officers and served with an IS.151A as an overstayer.

3. On 19 November 2013 the Appellant applied for a grant of leave to remain relying upon her Article 8 rights. That application was refused on 16 April 2014, and a removal decision was also made on that date pursuant to s10 of the 1999 Act.

4. The Appellant duly appealed against those immigration decisions. Her appeal was heard on 16 September 2014 and it was dismissed under the Immigration Rules and on Article 8 grounds in a Decision promulgated on 7 October 2014 by First Tier Tribunal Judge Cope.

5. The Appellant's application to the First Tier Tribunal for permission to appeal was refused by Judge Astle on 8 December 2014, but the renewed application to the Upper Tribunal was granted by Upper Tribunal Judge Canavan on 8 June 2015.

6. The Respondent filed a Rule 24 response dated 19 July 2015.

7. Thus the matter comes before me.

The decision under appeal

8. The Appellant's application for leave was made on the basis that she met the requirements of Appendix FM to the Immigration Rules as an adult dependent relative, alternatively that her Article 8 rights were such that she met the requirements of paragraph 276ADE and/or the requirements of Appendix FM, or that her circumstances were such that she should be granted DLR outside the Immigration Rules because her removal was disproportionate. The substance of that application was that the Appellant had lived with her niece, Ms S, and family since entry to the UK, was settled, and had significant mental health issues which could be managed and treated in the UK, but not in Pakistan, so that her return would be disproportionate to any public interest the Respondent sought to protect through her removal.

9. The Respondent accepted that the Appellant met the suitability requirements set out in Appendix FM, but was not satisfied that the Appellant had any relationship with an individual in the UK as a parent or as a partner. Her circumstances did not meet the requirements of paragraph 276ADE because she had not lived in the UK for 20 years, and because she had not demonstrated that she had no social cultural or family ties to Pakistan. On the contrary the evidence relied upon in her 2006 appeal demonstrated that she had family ties and assets in Pakistan which included farm land and property in addition to the home she had lived in.

10. The Respondent accepted that the Appellant had provided evidence to the effect that she suffered from Anxiety and Dysthymic Disorder, a learning disability, and depression. The Respondent was not however satisfied that she would be unable to access adequate medical care upon return, or, that she suffered a life threatening ailment. Thus she did not meet the Article 3 threshold set out in N [2008] ECHR 26565/05.

11. The Appellant did not attend the hearing to give evidence, and the Judge was informed by Counsel that the family had been unable to persuade her to get out of bed and attend [4]. No adjournment request was made to allow her to do so.

12. The Appellant relied upon three separate bundles of documents at the hearing which included GP notes, letters from the GP Dr Lands, a report dated 31 July 2013 by Dr McGeown a Consultant Psychologist, and letters to the GP from the Consultant Psychiatrist Dr Gill who had treated the Appellant since her admission to Roseberry Park Hospital.

13. The Judge concluded that the Appellant's niece Ms S was not a reliable witness. She had been complicit in the Appellant's failure to leave the UK before the expiry of her leave, and the Appellant had continued to live as a member of her household long after she knew the Appellant's leave had expired. Her evidence concerning the Appellant's past circumstances in Pakistan was not consistent with the evidence that she had given to the Tribunal in 2006. She had at various times claimed that when living in Pakistan the Appellant was the carer for her own mother, and that the Appellant was cared for full time by her own mother, and that the family in the UK had no idea of the Appellant's problems prior to her arrival in the UK. Since Ms J's evidence echoed that of Ms S, the Judge concluded that she was not a reliable witness either. Ms J is the Appellant's sister. The Judge did not hear evidence from one of the Appellant's brothers who also lives in the UK, or his wife.

14. Whilst the Judge accepted that the Appellant had suffered a psychotic episode sufficiently serious to justify her compulsory detention under the Mental Health Act, and that she continued to need daily medication, he was not satisfied that at the date of the hearing the Appellant's condition, or ability to care for herself, had been accurately and honestly described by Ms S, or Ms J [33, 54-58]. The medical evidence indicates that the detention was from 6th -27th June 2014, and that upon discharge the Appellant returned to living as a member of the household of Ms S.

15. The Judge concluded that the requirements of the Immigration Rules were not met, and then considered the Article 8 appeal outside the Immigration Rules. He accepted that the Appellant had established "family life" with Ms S and Ms J and their families for the purpose of Article 8, and that she had established a "private life" in

the UK. He took into account the provisions of s117A-D of the 2002 Act, and also considered the interests of the children of Ms S. Having done so he concluded that the removal decision was proportionate.

The Appellant's challenge to the decision

16. Paragraph 4 of the grounds asserts that there was no reliable evidence to support the Judge's conclusion that the Appellant was able to care for herself, and relied upon the evidence of the GP Dr Lands who had expressed the opinion on 5 August 2014 that it would take several months for the Appellant to recover to a level where she would be able to give evidence.

17. Paragraph 5 of the grounds asserts that there was an error of law in the Judge's failure to accept in full the evidence of Ms S upon the issue of the Appellant's care needs, when her evidence was said to be consistent with the medical evidence relied upon. It goes on to suggest that nursing notes in relation to the Appellant might have assisted her to establish her case, but that the Judge had said that he did not require them.

18. Paragraph 6 of the grounds asserts that there was no evidence to suggest that the Appellant was party to any deception of the Tribunal by Ms S during the Appellant's 2006 appeal, and that the Judge therefore wrongly punished the Appellant for deception to which she was not a party in rejecting the Article 8 appeal.

19. Permission to appeal was granted by Upper Tribunal Judge Canavan on the basis it was arguable that although the Judge had said that he had considered all of the medical evidence it was arguable that he may have failed to attach sufficient weight to an important piece of evidence from an independent health professional that might have had an material effect on the outcome of the appeal. If the Appellant was too unwell to attend court following a recent psychotic episode it might call into question whether she was fit to be removed, and thus the proportionality of the proposed removal. Although that was considered the strongest ground, permission was granted on all of the grounds.

20. The Respondent's Rule 24 response was blunt; there was no legal error. Dr Land's evidence was expressly referred to by the Judge and the weight that could be given to it was properly considered. The Appellant had suffered no mental health illness between 2006 and 2013. The first consultation with any medical professional was after she had been served with IS.151A. She, Ms S, and Ms J all knew full well during this period that she was an overstayer. Adequate reasons were given for the finding that neither Ms S, nor Ms J were reliable witnesses either on the issue of whether she could care for herself, or

her true circumstances in Pakistan. Given the limited extent of the Appellant's current medical treatment (a reference to her medication) and her discharge from hospital there was no question mark over her fitness to be removed from the UK.

Error of Law?

21. I accept as Ouseley J did in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Evidence, whether oral or documentary, does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by the claimant. That is precisely the exercise the Judge sought to undertake.

22. Given the disparity between Ms S' evidence to the Tribunal in 2006 and her evidence in support of this appeal, the failure of the Appellant to leave the UK prior to the expiry of her leave, and the admitted fact that throughout she had lived in the UK as a member of the household of Ms S there were obvious reasons for the Judge to approach the evidence of Ms S, and Ms J with caution.

23. Ms Weatherall's principal argument did not follow the course suggested by the grant of permission – instead she sought to attack the adverse credibility findings made in relation to Ms S, and Ms J, both as findings that should not have been made on the available evidence, and as findings that were in any event irrelevant to the issue of what the Appellant's true care needs were. There is no merit in that approach. There was a clear disparity between the evidence that was given to the Tribunal in 2006, and the picture that Ms S, and Ms J sought to paint before the Judge of the Appellant's likely circumstances upon return, although neither of them were prepared to accept to the Judge that the Tribunal had been actively and dishonestly misled in 2006.

24. It was quite clear to the Judge that in 2006 the Tribunal had been told that the Appellant was the sole carer for her elderly mother, and not the other way around as was now suggested. The Tribunal had been told that the Appellant had two married sisters living in Pakistan, and that she owned properties and farm land in addition to the interests she had in the home in which she and her mother lived. They enjoyed an income from those assets, supplemented by remittances from the UK which were adequate for their needs. This was not on the evidence given in 2006 a woman who upon return would need to live alone without family support and who would be without a home or income. Ms Weatherall did not seek to suggest that

the Judge had misunderstood, or mistaken, the evidence given in 2006.

25. Ms Weatherall accepted that in the circumstances of this appeal the Judge was right to approach their evidence with caution, but argued that if elements of the evidence of Ms S and Ms J were supported by the medical evidence those elements ought to have been given more weight. She accepted that the Judge had not rejected their evidence outright, and that he had sought to adopt a more nuanced approach.

26. As the Judge identified the key disputed issue of fact was the true extent of the Appellant's care needs. In turn the reliability of the evidence of Ms S and Ms J was crucial to the assessment of those care needs, since the letters to the GP from the treating consultant did not shed light upon them, and since both Dr McGeown and the GP were necessarily reliant upon the account of the care needs that had been given to them by Ms S and Ms J, and were essentially reporting what they had been told by Ms S and Ms J. In particular the Judge appears to have placed weight upon the evidence contained within the letters from Dr Gill and his team to the GP, because that team had the opportunity to submit the Appellant to extended observation whilst an in patient. Despite that opportunity there was no suggestion from Dr Gill of his team that at the low point in her psychosis the Appellant was unable to feed herself, toilet herself, or dress herself, as Ms S and Ms J claimed was still the case [35-36]. Even if that had been the case at the low point in the psychosis it still begged the question of whether it was still the case at the date of hearing, since there had plainly been an improvement in her condition to some degree or she would not have been discharged.

27. Ms Weatherall accepted before me that the Judge had accurately summarised the evidence contained within the letters from Dr Gill and his team to the GP, and that she was unable to identify any material element of the medical evidence that the Judge had overlooked.

28. It follows that, despite the concern of the Upper Tribunal Judge who granted the Appellant permission to appeal, the Judge did not overlook any part of the medical evidence, and, that he did not fail to properly consider the weight that could be given to it. The Appellant's capacity to give evidence was not the same as her ability to care for herself, or, her ability to be cared for by members of her extended family in Pakistan. The evidence did not establish that the Appellant was too unwell to attend the hearing of her appeal. The only utterly reliable evidence before the Judge in this respect was that she had failed to attend, the only evidence as to why she had not done so was that which had been proffered to the Judge by two witnesses he had given adequate reasons for assessing as unreliable. Thus, whilst it was accepted that at the date of the hearing the Appellant remained upon medication to control her mental health the evidence fell a long

way short of establishing that she was too ill to be removed from the UK, or that if she was, she would neither be able to care for herself nor be cared for by members of her extended family.

29. There is no proper basis for the assertion that the Judge punished the Appellant for the deception practised by others, and I need say no more about this.

30. In my judgement the Appellant has failed to establish any error of law in the Judge's conclusion that the evidence relied upon did not establish that there were any compelling compassionate circumstances that meant the decision to remove the Appellant to Pakistan, lead to an unjustifiably harsh outcome.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 7 October 2014 did not involve the making of an error of law in the decision to dismiss the appeal that requires that decision to be set aside and remade. The decision to dismiss the appeal is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

The Appellant did not seek anonymity before the First Tier Tribunal, and no request for anonymity is made to me. Nevertheless given the issues raised by the appeal there does appear to me to be a proper basis for the Upper Tribunal to make such a direction of its own motion.

Deputy Upper Tribunal Judge JM Holmes
Dated 4 September 2015