IAC-AH-KEW-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/26050/2014
IA/26060/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3rd November 2015	**On 23rd November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MR MUHAMMAD RIAZ (FIRST APPELLANT)
MRS NAZIR BEGUM (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr P. Saini of Counsel
For the Respondent: Ms E. Savage, Home Office Presenting Officer

DECISION AND REASONS

The Appellants

1. The Appellants are citizens of Pakistan and are husband and wife. The First Appellant was born on 1st January 1951 and the Second Appellant on 1st January 1954. They appeal against the decision of Judge of the First-tier Tribunal O'Rourke

sitting at Newport on 30th January 2015 who dismissed their appeals against decisions of the Respondent dated 11th June 2014. Those decisions were to refuse to grant the Appellants further leave to remain in the United Kingdom on the grounds of private and family life.

2. The Appellants arrived in the United Kingdom on 16th January 2014 with leave to enter as family visitors valid until 12th March 2014. On that date they applied for leave to remain on the basis of their private and family lives. The Respondent in refusing the applications was not satisfied that the Appellants met the requirements of Appendix FM of the Immigration Rules as neither were UK citizens or settled in the United Kingdom. The Respondent also refused the application under the requirements of paragraph 276ADE of the Immigration Rules because it was not accepted that there were significant obstacles to the couple's reintegration into Pakistan. It was conceded at the hearing that they could not meet Section EC-DR of Appendix FM because they were applying in-country and had not made valid applications for entry clearance as adult dependent relatives. The appeals therefore proceeded on the basis that the Respondent's decisions breached this country's obligations under Article 8 (right to respect for private and family life) of the Human Rights Convention.

3. The case turned on the state of health of the Appellants. Due to their respective health problems and age the Appellants argued that they needed long-term personal care which for various reasons they were unable to obtain to the required level in Pakistan. They were heavily reliant upon their daughter in this case, the Sponsor. It would be disproportionate to require the Appellants to return to Pakistan in order to make an application under Appendix FM as adult dependent relatives.

The Determination at First Instance

4. At paragraph 12 Judge O'Rourke set out his findings. The Appellants had made previous visits to this country and returned to Pakistan at the end of them but on their most recent visit 16th January 2014 they had found the journey difficult and needed medical care as a consequence. The Appellants had told the Judge that they needed help from their family with tasks such as eating, dressing and washing. However the Judge at paragraph 15(2) stated that it was not apparent to him that the Appellants' physical ailments were such as to require such assistance.

5. The Judge had before him medical evidence which he described at paragraph 12(ii). There were letters from the Appellants' doctor in the United Kingdom dated 21st January 2015 which described the First Appellant as suffering from type 2 diabetes, osteoarthritis and hypertension. His walking was limited and his blood pressure was controlled by medication. His diabetes was currently only poorly controlled but further medication was prescribed in tablet form. The Second Appellant was suffering from arthralgia with minimal osteoarthritis which caused her distress and limited her mobility. Her blood pressure was controlled by medication and she took other medication for dyspepsia. The First Appellant accepted in court that contrary to his statement he did not need help with the act of eating merely that meals be

cooked for him. Nor did he need help dressing but his clothes were washed for him. He would be unable to cook for himself if returned to Pakistan as the Second Appellant cooked for him.

6. The Second Appellant was able to dress, feed and wash herself but her eyes were bad as she had the wrong lenses. The Sponsor confirmed that she washed, cooked and shopped for the couple and took them to the doctor ensuring they took their medication and checked their blood pressure. The First Appellant had been unable to work in Pakistan for some years due to pains in his leg and was dependent upon help from his family. The Sponsor used to send between £100 and £200 a month to them. The First Appellant spent £100 a month in the United Kingdom on medication. Whilst medical care might not be so accessible in the part of Pakistan in which her parents lived the Sponsor accepted that they had in the past obtained such care. Both the First Appellant and the Sponsor said they had attempted to obtain day-to-day assistance with cooking and washing perhaps from a paid helper or maid but could not find somebody sufficiently trustworthy.

7. The Judge considered it implausible that the couple would not without their family's financial assistance be able to find a person in Pakistan who could assist them with cooking, clothes washing etc. The couple had been able to access medical care in Pakistan and could obtain the same medication as they did here. There would be an interference with family life but it would be pursuant to the legitimate aim of immigration control. The Respondent's decision was proportionate to that aim because the Appellants were not (at least currently) at the level of requiring long-term personal care to perform everyday tasks. As they would not succeed in an entry clearance application now the doctrine in **Chikwamba** would have no relevance. Although being cared for by their family was the couple's preferred option such care as they did need could be provided in Pakistan where they could be visited by their family so contact could continue.

The Onward Appeal

8. The Appellants appealed against the Judge's decision to dismiss their appeal on two grounds. The first was that the Judge had failed to adequately consider or give sufficient weight to the medical evidence. The Judge had two letters from their GP in the United Kingdom but also two letters from their doctor in Pakistan. They expressly addressed the issues of the Appellants' current ailments and the limitations placed upon the Appellants by these ailments. The Judge had not considered this medical evidence in his determination beyond outlining in his summary of the facts of the case what was stated in some of the letters. Crucially the Judge when reaching his conclusions in respect of the extent to which the Appellants needed long-term personal care had not considered all the letters. There was no reasoned analysis of the medical evidence at all and no weight was attached to it. The failure to evaluate it was a material error of law.

9. The second ground was that there had been a failure to give adequate reasons for a material finding. The Judge had found that the Appellants did not require long-term

personal care but the only identifiable reason given for this conclusion referred to the Appellants' own evidence. There was no consideration of other factors. The finding in respect of long-term personal care was material because the remainder of the Judge's decision in respect of Article 8 and the **Chikwamba** argument turned on it.

10. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Pooler on 9th April 2015. Refusing permission to appeal he wrote that the Judge was aware of the medical evidence before the Tribunal as the grounds themselves had acknowledged. The Judge had found that the Appellants' oral evidence was that neither of them needed help with feeding, dressing or washing and in those circumstances it was open to the Judge to conclude despite the medical evidence that they did not need long-term personal care to perform everyday tasks. The second ground had submitted that the Judge's reasons for finding that the Appellants did not need long-term personal care were inadequate because the only identifiable reason was the Appellants' own evidence. It was however open to the Judge to rely on the Appellants' evidence. The reasons were adequate and there was no arguable error of law.

11. Following that decision the Appellants renewed their application for permission to appeal to the Upper Tribunal in substantially longer grounds than had been submitted to the First-tier. The Appellants relied on the family life they shared with their daughter and son-in-law and grandson which was more than normal emotional ties. There was an element of dependency between the parties. But for the fact that they were present in the United Kingdom when they submitted their application for leave to remain the Appellants would meet the substantive requirements under the adult dependent relative provisions of Section EC-DR. As such the ratio in **Chikwamba [2008] UKHL 40** that appeals should only rarely be dismissed on the basis that it would be more proportionate and more appropriate for an Appellant to apply for leave from abroad would apply.

12. On the basis of the evidence in respect of the Appellants' son-in-law's finances and the accommodation available to them the financial requirements of ECDR would be met. The Appellants would be unable to obtain the required level of care in Pakistan even with the financial help of their daughter and son-in-law. The grounds proceeded to quote from the letters before the Tribunal to emphasise what the Appellants' care needs were. Even if the Appellants could not meet the adult dependent relative requirements on application from Pakistan the Respondent's decision to refuse their application was disproportionate to the legitimate aim pursued. The Appellants had never breached immigration laws in this country and would be financially maintained and accommodated without recourse to public funds. There was a strong family life enjoyed by the dependent parents and their daughter, son-in-law and grandson. The latter would have difficulty travelling to Pakistan to visit the Appellants because of fears about political conflict close to the Appellants' home area.

13. This renewed application for permission came on the papers before Upper Tribunal Judge Eshun on 18th June 2015. In granting permission to appeal she wrote that it

was arguable that the Judge had failed to adequately consider or give sufficient weight to the medical evidence in respect of the Appellants' medical conditions and their care needs; and failed to give adequate reasons for his finding that the Appellants do not require such care. On 21st August 2015 the Respondent replied to the grant of permission by letter stating that she opposed the Appellants' appeal and that the Judge of the First-tier Tribunal had directed himself appropriately. At paragraph 15(2) of the determination the Judge had made findings open to him concerning the severity of the Appellants' medical conditions. At paragraph 15(4) the Judge had made findings that the Appellants could obtain the same medication in Pakistan. There was no material error in the determination. The grounds were nothing more than a disagreement with the conclusions.

The Hearing Before Me

14. Counsel for the Appellants relied on the skeleton argument which had been filed for the hearing at first instance and which formed the basis of the onward appeal to the Upper Tribunal. There had been no analysis by the Judge of the medical evidence or the diagnoses given to the Appellants. The Judge was aware he had medical evidence before him but made no findings thereon. The Judge could take a view on the Appellants' evidence but he was obliged to decide on the medical evidence. There was a need for the expert evidence to be given some weight. The Appellants could not cope alone. It was the failure to assess the medical evidence which gave rise to the error of law.

15. In response the Presenting Officer relied on the Rule 24 reply. The Tribunal had before it the medical evidence and the Judge had taken into account the contents of the letters from the Appellants' doctor in the United Kingdom. That medical evidence had been considered alongside other evidence. Although there was a duty to give sufficient reasons they need not be elaborate. The consideration of the medical evidence was adequate. The Appellants did not need long-term care. The two grounds in the application for permission were linked to each other and both alleged a failure to provide adequate reasons. The medical evidence itself which was before the Judge was of numerous needs and conditions but it did not demonstrate that the Appellants required long-term care. It was the First Appellant's own evidence that he did not need assistance with everyday tasks, and in those circumstances it was difficult to see how the First-tier Tribunal could have reached any other conclusion or say that he did need assistance with everyday tasks. Prior to the Appellants' arrival in the United Kingdom in 2014 they had been receiving treatment in Pakistan for the conditions referred to in the medical evidence. Other services could be obtained in Pakistan with financial assistance which they were receiving from family members.

16. Finally in closing Counsel reiterated that there needed to be an analysis of the doctor's evidence. There had been a considerable focus by the Judge on the Appellants' oral evidence but expert evidence was there and there needed to be a finding on it. There was no consideration of the contents of Counsel's skeleton argument submitted for the hearing at first instance. There was an inadequacy of

reasoning. If there was a conflict between the Appellants' evidence and the expert's evidence the Judge needed to decide upon that.

Findings

17. The Appellants could not bring themselves within the Immigration Rules and therefore had to argue that their appeals should be allowed under the provisions of Article 8. The burden of proof of establishing that Article 8 applied rested upon them and the usual civil standard of balance of probabilities applied. Although Article 8 can encompass a large variety of situations, the Appellant's argument in this case was that as a result of age, illness or disability they required long-term personal care to perform everyday tasks see Section E-ECDR.2.4 of Appendix FM. They satisfied the medical requirements for entry clearance as dependent relatives. The Appellants could not satisfy the provisions of ECDR because that section of Appendix FM requires that the applicant must be outside the United Kingdom and must have made a valid application for entry clearance as an adult dependent relative. The Appellants could show neither of those requirements. They based their Article 8 argument on their claim that they otherwise satisfied E-ECDR.2.4 and that it was unreasonable to expect them to have to return to Pakistan to make an application from there.

18. The chief complaint made against the dismissal of their appeals by Judge O'Rourke was that he had not given any or any adequate consideration to the medical evidence of the Appellants' conditions. The Judge had the medical evidence before him in the form of letters from UK doctors and the Appellants' Pakistan doctors. He also had a quantity of oral evidence from the First Appellant and the Sponsor the Appellants' daughter. The Judge summarised the medical evidence at paragraph 12(ii). The complaint made is that that summary did not include all of the relevant medical evidence and that in any event the Judge did not say what of the medical evidence he did or did not accept.

19. I do not accept either of those two arguments. Firstly the Judge was aware that the First Appellant's walking was limited. Dr Sadhra (in the United Kingdom) had said that the First Appellant's capability and distance was significantly compromised and Dr Ul-Haque (in Pakistan) had said that the First Appellant had difficulty in walking. It is important to emphasise that this is a reasons-based challenge and the question therefore is whether the Judge has given adequate reasons such that a losing party can understand why they lost. It was not necessary for the Judge to set out each and every piece of evidence that was before him. What the Judge has done is to summarise the thrust of the medical evidence. In my view there is very little difference between the summary which the Judge made of the medical evidence in relation to the First Appellant and what the reports themselves said especially insofar as the extracts quoted in the grounds of permission to appeal are concerned.

20. The second challenge is that even if the Judge has set out an adequate summary of the evidence before him he has not analysed it adeuately. That indeed was the main argument made in the hearing before me. The issue turns on to what extent the

medical evidence either differs from or enlarges upon the oral evidence of the Appellants themselves (and the Sponsor). The Judge was focusing on whether the Appellants needed assistance with eating, dressing and/or personal hygiene whether their mobility might be limited did not come into the equation. That the Judge did not specifically refer to the medical evidence at that point in his determination by saying he either accepted or rejected it was irrelevant. The medical evidence added nothing of significance to the Judge's analysis of the Appellants' needs. The Judge's reference to the Appellants not needing assistance "by their own evidence" is an indication that the Judge was basing his findings on the relevant evidence before him. It was not a question of whether the medical evidence conflicted with the Appellants' evidence it was a question of whether the medical evidence advanced the Appellants' case. The Judge's reference at paragraph 15(ii) was an indication that he did not consider that it did advance the Appellants' case. What the needs were was a factual matter to be decided upon the evidence of the person best placed to give it, that is the First Appellant.

21. As to the Second Appellant the Judge summarised her medical evidence and noted that her mobility too was limited. The Second Appellant according to Dr Sadhra suffered from osteoarthritis of the knees with knee pain. That was confirmed by Dr Ul-Haque. He added that she had been diagnosed with acid peptic ulcer disease which caused her significant abdominal pain. The Judge noted the dyspepsia and noted too that the Second Appellant took medication for that as indeed her blood pressure too were controlled. Even if the Judge did not mention a doctor by name it was evident that he was aware of the content of the medical evidence. Upon return to Pakistan the Judge's view was that the Appellants could access the medication which they had been taking up until now for their respective conditions which would control those conditions. In short the conditions of themselves were not sufficient to be able to establish that the Appellants would all things being equal come within the requirements of E-ECDR-2.4.

22. The grounds for permission to appeal complained that the Judge had not taken sufficient heed of comments made by the doctors that the First Appellant's mobility problems required dependency on the Second Appellant and that the Second Appellant found it difficult to maintain the upkeep of the house given her health issues. That does not indicate that the Appellants could show what concerned the Judge namely did the Appellants need assistance with eating, dressing or personal hygiene? It was not necessary for the Judge to rehearse each and every piece of evidence particularly if that evidence did not establish the Appellants' case. What was missing from the Appellants' medical evidence was something which would satisfy the test in E-ECDR.2.4.

23. The grant of permission to appeal referred in general terms to whether the Judge had failed to give sufficient weight to the medical evidence and the Appellants' care needs and the finding that the Appellants did not require care. I find that the Judge has given sufficient reasons for his conclusions that the Appellants cannot show they require long-term personal care to perform everyday tasks. As the Judge acknowledged that position may change in the future but he was obliged to look at

the position as it was at the date of hearing. It was not a question that he preferred the oral evidence of the Appellants to the medical evidence of the doctors but rather that the medical evidence of the doctors did not significantly advance the Appellants' case or contradict what the Appellants themselves had said.

24. The Judge made a finding that the Appellants could access care in Pakistan to assist them with cooking, clothes, washing etc. tasks at present apparently done by the Sponsor. That was a finding which was open to the Judge on the evidence and I would agree with the Respondent's submissions that in that respect the grounds for permission to appeal are a mere disagreement with the Judge's adverse conclusions. No adequate reasons were given why in a large and populous country such as Pakistan such assistance could not be found given the level of funds available to pay for such care. Furthermore the Appellants had received adequate medical care in Pakistan (from Dr Ul Haque who described the Second Appellant as a regular patient of his) and there was no reason why that could not continue. That too was a conclusion open to the Judge on the evidence.

25. Although that was the principal focus of the case and indeed the submissions made to me, it is fair to say that there were other Article 8 arguments raised before the Judge (and referred to in the grounds for permission to appeal). These related to the relationship between the Appellants and the Sponsor and her family and the difficulties of the Sponsor's family travelling to Pakistan to visit and also the "**Chikwamba"** argument Insofar as **Chikwamba** was concerned if the Appellants could not succeed in an out of country application because they could not meet E-ECDR.2.4 for the reasons given by the Judge it would be a bizarre and unsatisfactory result for them to be able to resist removal the weaker was their future case for entry clearance from abroad. In order to pray-in-aid **Chikwamba** the Appellants had to show that but for the fact they were in the United Kingdom they would otherwise succeed in an application for entry clearance. This they could not show for the reasons given by the Judge (that they did not come within ECDR whose reasoning on the point did not amount to a material error of law.

26. The Judge dealt with the remainder of the Article 8 claim at paragraphs 22(iii) and (iv) when he said that although being cared for by their family in the United Kingdom was the Appellants' preferred option such care as they did need could be provided in Pakistan. The Appellants and their family had visited each other in the past and could communicate daily so such contact could continue assisting in the maintenance of family life. There was little if any evidence to support the assertion that difficulties in the Appellants' home area would make visiting difficult. The family life which the Appellants had enjoyed with the Sponsor's family had only been experienced for the last year whereas the Sponsor had now been in the United Kingdom for at least five years (see paragraph 19 of the determination). It was open to the Judge to find on the facts before him that the interference with the Appellants' private and family life by requiring them to return to Pakistan and refusing their applications for further leave to remain was proportionate to the legitimate aim pursued. I therefore dismiss the appeal in this case.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellants' appeals.

Appeals dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 19th day of November 2015

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Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

The appeals having been dismissed there can be no fee award.

Signed this 19th day of November 2015

…….
Deputy Upper Tribunal Judge Woodcraft