



IAC-AH-PC-V1

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

Appeal Number: IA/37690/2014

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower, Decision & Reasons Promulgated  
Birmingham  
On 6<sup>th</sup> October 2015**

**On 13<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**SHAKILA MUNIR  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr B Singh of Counsel instructed by Syeds Solicitors

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against the decision of a panel of the First-tier Tribunal comprising Judges Landes and McGarr (the FTT) promulgated on 6<sup>th</sup> January 2015.
2. The Appellant is a female citizen of Pakistan born 17<sup>th</sup> November 1944 who entered the United Kingdom as a visitor on 14<sup>th</sup> January 2014 with leave valid until 14<sup>th</sup> July 2014. On 30<sup>th</sup> June 2014 the Appellant applied for

further leave to remain to enable her to live with her son Atiq Ahmed Mir (the Sponsor) and his wife Shagufta Ghulam.

3. The application was refused on 12<sup>th</sup> September 2014, the Respondent issuing a Notice of Immigration Decision of that date refusing to vary leave to remain, and deciding to remove the Appellant from the United Kingdom. The Respondent issued a reasons for refusal letter also dated 12<sup>th</sup> September 2014. In summary that letter acknowledged the medical evidence produced on behalf of the Appellant but contended that medical treatment would be available in Pakistan. The Respondent noted that the Appellant had applied for leave to remain relying upon Articles 3 and 8 of the 1950 European Convention on Human Rights (the 1950 Convention) and on compassionate grounds. The Respondent did not accept that the Appellant's removal would breach Articles 3 or 8. The appeal was heard by the FTT on 8<sup>th</sup> December 2014. Evidence was given by the Appellant, the Sponsor, and Mrs Ghulam. The FTT found the evidence to be inconsistent and unreliable. It was made clear to the FTT that the appeal was not being pursued with reference to Article 3, but it was contended that the Respondent's decision was not in accordance with the law because the Respondent had not considered the application outside the Immigration Rules on the basis of exceptional circumstances. It was submitted that to remove the Appellant would breach Article 8. The FTT did not accept the submissions made on behalf of the Appellant and the appeal was dismissed.
4. This resulted in the Appellant making an application for permission to appeal to the Upper Tribunal. In essence the Appellant relied upon five grounds which are set out in summary below, using the same headings as contained in the grounds;
  - (i) **Misdirection in law - decision not in accordance with the law**

The FTT should have found the Respondent's decision to be not in accordance with the law as the Respondent had not considered the Appellant's case outside the Immigration Rules on the basis of exceptional circumstances.
  - (ii) **Misdirection in law - psychiatric report of Dr M Qureshi consultant psychiatrist**

The FTT erred in law by taking issue with the expert psychiatric report of Dr Qureshi. The FTT was not in a position to go behind the conclusions of the expert report.
  - (iii) **Misdirection in law - failing to take into consideration irrelevant (sic) matters/ findings inconsistent with the evidence/inadequate reasoning**

The decision and findings reached by the FTT are contrary to the evidence. The FTT failed to make any specific findings in relation to the medication the Appellant was taking, and findings made that there was no evidence to suggest the Appellant was cared

for in Pakistan before coming to the United Kingdom are perverse and contrary to the evidence.

**(iv) Article 8 - right to family life**

The FTT erred in finding that the Appellant had not established family life with the Sponsor and her daughter-in-law that would engage Article 8.

**(v) Acceptance of family life - reasonableness of relocation**

The FTT erred in concluding that it was reasonable to expect the Sponsor and the Appellant's daughter-in-law to relocate to Pakistan which was contrary to the decision in Sanade and Others [2012] UKUT 00048 (IAC).

5. Permission to appeal was granted by Judge of the First-tier Tribunal P J M Hollingworth in the following terms;
  1. An arguable error of law has arisen in relation to the scope of the interpretation of the evidence of Dr Qazi. At paragraph 30 of the decision the judges have set out Dr Qazi's conclusion that the Appellant required a full-time family attendance to boost her morally and psychologically. The judges stated that they found this was the nub of it. Subsequently the judges stated that they were not satisfied that the Appellant's dependency was not more than normal emotional ties. In reaching this conclusion the judges have not explained the rejection of Dr Qazi's conclusions or differentiated his conclusions from other findings of fact leading to the conclusion that dependency was no more than normal emotional ties.
  2. A substantial analysis has been conducted in relation to the evidence of Dr Qureshi. This has not been undertaken in relation to the evidence of Dr Qazi.
  3. At paragraph 34 the judges proceed on the hypothesis that they are wrong on the footing that the relationship does amount to family life. Subsequently it is arguable that the analysis is inadequate or fails to attach sufficient weight to relevant factors in reaching the conclusion that it would be reasonable to expect the family to relocate.
6. The Tribunal issued directions making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal decision should be set aside.

**The Appellant's Submissions**

7. Mr Singh relied upon the grounds contained within the application for permission to appeal in their entirety contending in particular that the FTT

had erred in its assessment of the medical evidence, and Article 8 assessment.

8. Mr Smart contended the FTT decision contained no error of law. In relation to the medical evidence reliance was placed upon paragraph 21 of SS (Sri Lanka) [2012] EWCA Civ 155. I was asked to accept that the FTT was entitled not to place weight upon Dr Qureshi's report.
9. I was asked to find that the FTT had made factual findings upon the evidence which it was entitled to make, one example being the finding that there was no medical evidence to indicate that the Appellant's use of a wheelchair was recommended by a doctor even though she had attended the hearing in a wheelchair.
10. I was asked to uphold the decision of the FTT.
11. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

12. I will deal with the points raised on behalf of the Appellant in the order that they are set out in the grounds.

### **Ground (i)**

13. This ground does not disclose an error of law. The FTT dealt with this point in paragraphs 6 and 20. The FTT found that the Respondent had considered Article 8 outside the Immigration Rules and referred to the appropriate authority, that being AI (India) [2011] EWCA Civ 1191, in particular paragraphs 21 and 22 of that judgment. A reading of the reasons for refusal letter confirms the application was considered outside the Immigration Rules, the author of that letter finding that the Appellant's "claim is not considered to be so exceptional as to override the legitimate requirements of immigration control." The FTT properly considered the preliminary point made by Counsel for the Appellant, and did not err in law in concluding that the Respondent's decision was in accordance with the law, and that it was appropriate for the FTT to go on and consider the appeal.

### **Ground (ii)**

14. It is not appropriate for a Tribunal to accept an expert report at face value. I set out below paragraph 21 (in part) of SS (Sri Lanka);  
"... A judge's decision not to accept expert evidence does not involve an error of law on his part, provided he approaches that evidence with appropriate care and gives good reasons for his decision. Ultimately, therefore, there are only two issues as to the Senior Immigration Judge's treatment of medical evidence: did he address that evidence with appropriate care and did he give good reasons for his conclusion?"

15. The FTT considered Dr Qureshi's report at paragraphs 27 - 29. It is evident that the report was considered with care. The FTT give cogent reasons why little weight was placed upon Dr Qureshi's clinical opinion regarding the Appellant's physical health condition, and why his opinion of the Appellant's mental health condition was treated with caution in the absence of results from a memory clinic. The reasons given by the FTT are adequate and sustainable and disclose no error of law.

### **Ground (iii)**

16. In my view this ground is misconceived and discloses no error of law, but discloses a disagreement with the findings made by the FTT.
17. It is incorrect to state that the FTT failed to make specific findings on material matters. Again it is evident that the evidence was considered with care and the FTT concluded that the evidence given by the Appellant and her two witnesses was inconsistent and unreliable. The FTT pointed out the inconsistencies in the evidence in paragraphs 22, 23 and 26. Further inconsistencies are noted in consideration of Dr Qureshi's report at paragraphs 27 - 29, with further inconsistencies in paragraph 30. This ground discloses no error of law.

### **Ground (iv)**

18. The FTT in paragraph 25 accepted that when considering Article 8 outside the rules, the initial question to be decided is whether there is family life that engages Article 8. The FTT correctly noted that family life between adults and their parents would not normally engage Article 8, but may do if there is dependency which creates more than the normal emotional ties.
19. In considering whether family life existed which would engage Article 8, the FTT was entitled to take into account the unreliable evidence that had been given and was entitled to reach the conclusion that the Appellant had been living alone prior to coming to the United Kingdom.
20. The judge granting permission has raised an issue in relation to Dr Qazi's evidence, which was not raised in the grounds. The evidence submitted by Dr Qazi was contained in a letter dated 21<sup>st</sup> December 2013, comprising eleven lines. The judge granting permission notes that Dr Qazi stated the Appellant needed "full-time family attendance to boost her morally and psychologically", and the FTT had found "this is the nub of it." However the FTT had gone on to find that the Appellant's dependency was no more than normal emotional ties. I do not find that this is inconsistent. The FTT took into account what Dr Qazi had stated and made a specific finding that the Appellant was self-caring in Pakistan, but was lonely since the death of her husband in 2008. The FTT found that the Appellant wished to be with her family but on the evidence presented, dependency was no more than the normal emotional ties between parent and adult son. This was a finding that the FTT was entitled to make and did not err in so doing.

## Ground (v)

21. It is contended that the FTT erred in paragraph 34 in reaching a conclusion, that if family life did exist, then it would be reasonable to expect the family unit to move to Pakistan to continue family life. Reliance is placed upon Sanade in which the Upper Tribunal indicated that it would not be reasonable for a British citizen to have to move from the United Kingdom to continue family life.
22. The FTT noted the Sponsor is a British citizen and that if he left this country, it would mean leaving his job and his property. He had however only lived in the United Kingdom for nine years and his wife is a citizen of Pakistan and they have no children. Despite the conclusion in Sanade, the FTT was entitled to find that if family life existed (which was not accepted) it would be reasonable for the Sponsor to return to Pakistan with the Appellant. The Court of Appeal in Agyarko and Others [2015] EWCA Civ 440 considered a claim by a national of Ghana for leave to remain in the United Kingdom with her naturalised British citizen husband. At paragraph 28 Sales LJ stated;

“28. So far as concerns Mrs Agyarko’s claim under Article 8 for leave to remain outside the Rules, since her family life was established with knowledge that she had no right to be in the United Kingdom and was therefore precarious in the relevant sense, it is only if her case is exceptional for some reason that she will be able to establish a violation of Article 8:”
23. Sales LJ went on to conclude in paragraph 33 that in that case there were no exceptional circumstances which would oblige the Secretary of State to grant leave to remain. It was specifically found that the fact that Mrs Agyarko’s husband is a British citizen “is not in itself, nor in combination with any other features of the case, something which makes this case exceptional for the purposes of the test under Article 8.”
24. In the appeal dealt with by the FTT, if family life was established by the Appellant it was done in the knowledge that she had no right to remain in the United Kingdom, and her immigration status was precarious. According to the judgment in Agyarko to succeed under Article 8 the Appellant would have to show that her case is exceptional for some reason, and the FTT gave sustainable reasons why that was not found to be the case, and the fact that her son is a British citizen and would have to go back to Pakistan with her, did not make the case exceptional.
25. In conclusion the grounds submitted on behalf of the Appellant disclose disagreements with the findings made by the FTT, but they do not disclose any material error of law.

## Notice of Decision

The decision of the First-tier Tribunal does not disclose an error of law. I do not set aside the decision. The appeal is dismissed.

**Anonymity**

Nor order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 7<sup>th</sup> October 2015

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 7<sup>th</sup> October 2015

Deputy Upper Tribunal Judge M A Hall