



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

Appeal Numbers: IA/40715/2013
IA/40722/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 29th April 2015
Extempore judgment**

**Determination & Reasons Promulgated
On 21st May 2015**

Before

UPPER TRIBUNAL JUDGE COKER

Between

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(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P Richards of Counsel instructed by Nasim & Co Solicitors
For the Respondent: Ms A Holmes, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. The appellants in this case were granted permission to appeal by the First-tier in June 2014. Permission was granted on Article 8 grounds.
3. The grounds of application refer to the first appellant having serious medical conditions which were only diagnosed after having been in the UK for some years. The medical conditions include HIV positive, Hepatitis B and D and Chronic Venous Insufficiency. These require extensive medical treatment and it is medical treatment that requires a combination of treatments to ensure that each of the illnesses is kept under control to as great a degree as possible. The grounds assert that there has been inadequate evaluation of the medical condition of the first appellant; that there has been a failure to properly evaluate the interference with the appellants' private lives because of the health consequences of removal; that the case of Akhalu [2013] UKUT 00400 has been misinterpreted by the First-tier Tribunal Judge; that the First-tier Tribunal Judge failed to consider the effect of removal on their private lives in Pakistan; failed to take into account that they had been lawfully resident in the UK and failed to take into account that the medical treatment that they had been receiving had been treatment that they had been lawfully entitled to receive.
4. The grounds also referred to a potential Article 3 challenge because permission had been granted in a case which was subsequently heard by the Court of Appeal and reported as GS [2015] EWCA Civ 40. Mr Richards did not pursue Article 3 in the light of that judgment.
5. The background to this case is that the first appellant arrived in 2007 and the second appellant, his wife, arrived in September 2010 as his dependant. Initially here as a student, the first appellant was subsequently granted leave to remain as a Post-Study Work visa holder. He has remained in the UK lawfully since the decision which is the subject of this appeal was made. The application was made outside of the Rules relying on Article 3 and Article 8. It was refused by the Secretary of State on the basis that it was an application made outside the Rules purely and simply on the basis that it was an application that was not covered by the Rules and that Article 3 had been considered and rejected. Article 8 was considered by the Secretary of State under paragraph 276ADE of the Immigration Rules alone and there was no consideration by the Secretary of State on the wider issues of Article 8. That was in effect recognised by the First-tier Tribunal who considered the appeal in terms of Article 8 in its widest sense. The judge went through the so-called five step test laid down in the case of Razgar.
6. The judge in the First-tier Tribunal set out in considerable detail the evidence before him. He set out the documentary and oral evidence including reference to letters from medical professionals in Pakistan which in one letter say that the infrastructure required to carry out the sensitive viral assays for the first appellant are lacking in Pakistan and that the availability of some of the latest antiviral drugs are not freely available. Another medical report says that the treatment and diagnostic facilities in Pakistan required to cater for the needs of this patient are not available to the extent required; that report goes on to recommend that medical treatment is continued in the UK.

7. A report from the doctors treating the first appellant here in the UK refer to the complex medical problems that he has and make the point that success rates for treatment of Hepatitis D are low and that although it is possible to control two out of three of the appellant's blood borne virus infections, there is no strategy that has any serious likelihood of preventing the progression of his liver disease. There is reference to the possibility of a liver transplant. The physician goes on to say that according to his understanding, there is no specific service in Pakistan for the management of these co-infections and he therefore predicts that a return to Pakistan would accelerate further the first appellant's liver disease.
8. The judge refers to this information. Although Mr Richards complains that there were no findings about that it is inconceivable that in reaching his conclusions the judge did not bear that in mind. There is no indication whatsoever in the First-tier Tribunal judgment that any of the evidence that was put forward on behalf of the appellants and by the appellants was not accepted by the First-tier Tribunal.
9. There is reference to the letters from Pakistan. There is reference to the letters from the GP and letters from the first appellant's employers and his educational achievements. All of this is set out immediately before the finding of the judge that the appeal relating to Article 3 must be dismissed. Immediately after that the judge goes on to look at Article 8. It cannot conceivably be said that the judge did not have all of those matters in mind when he reached his conclusions regarding Article 8.
10. He summarises the evidence in very brief terms in paragraph 29 of his decision. He accepts the dates that the couple arrived in the UK; that they are in a relationship and they are married. He is satisfied that the first appellant faces particularly difficult medical issues and that the second appellant has medical problems. He accepts that there are no previous convictions and that they have been employed, earning money and paying tax. He accepts the educational certificates. Although the judge does not specifically state that he has taken into account the fact that the first appellant would have difficulty accessing medical treatment in Pakistan, I say again that it is inconceivable that he was not aware of that given the references to the medical reports that appear earlier in the determination.
11. At paragraph 30 the First-tier Tribunal judge says, "I take into account that the consequence of removal for their health in not being able to access equivalent healthcare in Pakistan as is available here in the UK is plainly relevant to the question of proportionality". Mr Richards submitted that the judge had applied the wrong test here to the extent that he was analysing whether the healthcare was equivalent rather than accessible but even if that were the case which I am not satisfied is the case given the way in which the medical facilities available have been referred to earlier in the determination, that does have to be weighed against the public interest in ensuring that the limited resources of the UK's health service are used for the benefit of those who are intended to be in the UK. Later in the determination the judge in any event says that he has borne in mind that the medical facilities of Pakistan are not the same as in the UK and that he has also borne in mind the

evidence before him of discrimination and the attitude of their respective families.

12. The couple will be returning to Pakistan together. The first appellant has been away from Pakistan for some seven years or more. They have both been in the UK on visas that do not lead inevitably to settlement. They have no expectation that they would be able to claim settlement and the only additional issue in this case is that this couple have, and particularly the first appellant, very unfortunately been afflicted by very serious illness. Akhalu was an appellant, whose appeal on Article 8 grounds was successful, was very different factually. The decision in her case had been that her condition had arisen whilst in the UK and was going to be treated by the NHS by providing a transplanted kidney which would require continued access to treatment of a different kind than she had needed before that and she would not be able to live in a manner that could be achieved to enable that access to treatment should she be returned to Nigeria. It was a very specific factual basis and although the other factors that spoke in favour of the claimant in Akhalu are similar to those in this case, in particular lawfully present in the UK when he fell ill, provided with medical treatment which he was entitled to receive, continues to work and has established a level of private life whilst here for the last few years and that the result of return to Pakistan may well result in extremely difficult and unpleasant medical consequences. Those are factors that do not in my view amount to factors that have not been taken into account by the First-tier Tribunal Judge. The judge was clearly sympathetic to the appellants as indeed am I. These cases are extremely difficult and upsetting but on the basis of the jurisprudence as it stands at the moment I am satisfied that the First-tier Tribunal Judge took account of all the factors that were raised before him in reaching his decision that the decision of the Secretary of State to refuse the application and remove the appellants was proportionate and so I dismiss this appeal and find that there is no error of law.

Conclusion

There is no error of law such as to merit the setting aside of the determination of the First-tier Tribunal.

The appeal is dismissed.

The determination of the First-tier Tribunal stands.



Upper Tribunal Judge Coker

Date 20th May 2015